



LIBRARY OF THE
UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN

KD

7872

.. L 48X

LAW.



The person charging this material is responsible for its return to the library from which it was withdrawn on or before the **Latest Date** stamped below.

Theft, mutilation, and underlining of books are reasons for disciplinary action and may result in dismissal from the University.

To renew call Telephone Center, 333-8400

UNIVERSITY OF ILLINOIS LIBRARY AT URBANA-CHAMPAIGN

NOTICE

Books are renewable all Library Materials!

The University Fee for each Lost Book is \$50.00

NOV 28 1982

ma. 8
Kelley. am
10726

ms

A DRAFT

CODE OF CRIMINAL LAW

AND

PROCEDURE.

BY

EDWARD DILLON LEWIS.

LONDON:

C. KEGAN PAUL & CO., 1, PATERNOSTER SQUARE.

1879.

(The rights of translation and of reproduction are reserved.)

K10

7872

L 48X

Law

"THE knowledge of this branch of jurisprudence, which teaches the nature, extent, and degrees of every crime, and adjusts to it its adequate and necessary penalty, is of the utmost importance to every individual in the State. For no rank or elevation in life, no uprightness of heart, no prudence or circumspection of conduct, should tempt a man to conclude that he may not at some time or other be deeply interested in these researches. The infirmities of the best among us, the vices and ungovernable passions of others, the instability of all human affairs, and the numberless unforeseen events which the compass of a day may bring forth will teach us, upon a moment's reflection, that to know with precision what the laws of our country have forbidden, and the deplorable consequences to which a wilful disobedience may expose us, is a matter of universal concern. . . . In proportion to the importance of the Criminal Law, ought also to be the care and attention of the Legislature in properly forming and enforcing it."—*Blackstone's Commentaries on the Laws of England*.

26 Gr 6 Kelly Law Bk Co.

613516

Law

PREFACE.



THE CODIFICATION OF THE LAWS OF ENGLAND has been long and earnestly desired. The great boon its accomplishment would secure to all classes has been universally proclaimed; but the dimensions and difficulties of the task would appear hitherto to have been regarded as sufficiently formidable to discourage the undertaking of a work of the highest importance to the country.

There is admittedly a special exigency for dealing with that important branch known as the CRIMINAL LAW, as to which it has been said with absolute truth no member of the community can be justly unconcerned. A law which, imposing the most serious penal consequences, expressly declares that in no instance, not even in the case of the most uncultured offender, shall ignorance as to what the law has enjoined to be done, or prohibited being done, be pleaded as an excuse—which has for one of its chief and most immutable maxims, “*Ignorantia juris, quod quisque tenetur scire, neminem excusat*”—should at least be plainly and tersely expressed, not in technical, but in popular language; it should certainly be practicable to ascertain and to compre-

hend what the law is without, as at present, having to refer to a mass of unclassified statutes and reports extending through some hundreds of years.

The opinion and great experience of a very high authority on the subject* is, however, hardly encouraging to any one undertaking to frame a Code of Criminal Law. The writer referred to says: "To my mind it is plain that a Code of Criminal Law, embodying the unwritten as well as the written law, can be framed; for I cannot imagine any proposition of law, which the mind can clearly apprehend, that may not with due care be reduced into writing; the task is no doubt an extremely difficult one, requiring the perfect concentration of the mind on the subject, and the use of the plainest and clearest language. But it is a very different question whether such a Code could ever be passed through Parliament; and my strong impression is that it never could be so passed. Neither House of Parliament would accept Bills prepared on such a principle without examination; and though possibly the House of Lords might pass such a Bill uninjured, it is perfectly hopeless to suppose that the House of Commons would do the same; and as the success of such Bills would depend entirely upon the accuracy of their language, it is highly probable that the alterations made in the House of Commons would prevent the possibility of passing such Bills in anything like a perfect state."

This, I trust, is a pessimist view. At the time

* Mr. C. S. Greaves, Q.C., one of the Criminal Law Commissioners: *vide* his edition of the Consolidation Statutes, 1861.

when those words were written the learned writer had certain unpleasant recollections of the manner in which he considered the House of Commons had "spoilt" a Bill prepared by him with great care in 1850, and his strictures were doubtless not altogether uninfluenced by this reminiscence. At the present day the overwhelming importance of a Code of Criminal Law is so thoroughly recognized that I cannot believe a measure fairly prepared, dealing with indictable offences, would meet with any factious opposition. The experience of important measures of law reform recently passed by the Legislature would appear to indicate a more liberal tendency of legislation than prevailed when the above observations were indited—a progress which so able and enlightened a lawyer would probably be the first to recognize.

In preparing a draft of what I conceive would be a fair CODE OF CRIMINAL LAW AND PROCEDURE, I have been influenced by a desire to produce a practical measure, instead of adding merely one other theory as to what should be done in that direction.

I am only too conscious that in a work of this character imperfections must exist; but I cherish the hope that this effort towards a practical solution may at least invite criticism, and perhaps aid in expediting a much-desired measure of Law Reform.

The project is necessarily divided into two distinct branches: the one embraces a Code of Criminal Law; the other, a Code of Procedure in the administration of the Criminal Law.

This, again, involves two subdivisions: the first

dealing with what are now called *indictable* offences ; the second, with matters embraced within the summary jurisdiction of Magistrates and Justices of the Peace.

The present, or first portion of a draft Code, has relation exclusively to Crimes and Offences in the former category ; *i.e.* to those of which, except under special provisions, Magistrates and Justices are not empowered to convict summarily, but in which the accused has a right to trial by jury.

And, first, as to the proposed CODE OF CRIMINAL LAW :

It has been my purpose to adhere as closely as possible to the genius of our existing law ; digesting it so as to avoid multifariousness and prolixity ; expressing it in clear, concise, and popular language ; avoiding, wherever possible, every technical form of expression ; and, except in cases pointed out in the notes, creating no new kind of offence ; but altering or extending existing provisions in every possible case where judicial decisions have shown the law to be faulty or defective.

In that portion of the proposed Code which relates to Procedure, the changes suggested are of a far more thorough character ; these will be hereafter examined and explained. It is only necessary here to state that these innovations do not necessarily form an integral part of this Code, and that such as may be determined to be inexpedient may be discarded or modified without materially interfering with the main portion of this work, *viz.* the estab-

lishment of a Code of Law and Procedure in respect of Crimes and Offences.

The first consideration that presents itself in the framing of a body of Criminal Law is as to what persons are capable of committing crimes; and in what cases, and under what circumstances, should particular persons be deemed incapable of or irresponsible for crime. Now the law of England at present exempts from punishment for crime : *

1. Infants, *i.e.*

(a) Those under the age of seven years.

(b) Those above seven, but under fourteen years of age, unless it appear, by the evidence, that they are possessed of sufficient intelligence to be able to discern between good and evil, in which case it is held, “ *Malitia supplet aetatem.*”

2. Idiots and Lunatics.

3. Persons under the constraint of a superior force, the principal instance of which is the case of a woman under the coercion of her husband.

As may easily be conceived, important questions have arisen in the case of two of these classes of persons, viz. lunatics, and women acting under marital control; and the law as to these is acknowledged to be in an unsatisfactory state.

First: As to the exemption of lunatics. It became, of course, necessary to frame some general definition as to the degree of unsoundness of mind

* Stephen's “Commentaries,” vol. iv. c. ii.

which should be sufficient to create irresponsibility for crime.

It is not every kind or degree of insanity that will exempt a man from responsibility for his acts.* Thus, in a modern case,† the judges held that if a man takes the life of another under an insane delusion that he is redressing some wrong, and thereby producing a public benefit, but with knowledge that in doing so he is acting contrary to law, he is guilty of murder, and cannot be held exempt from punishment on the ground of insanity. The test laid down as to whether a man should be deemed irresponsible on the ground of insanity was this: *Did he at the time of doing the act know the difference between right and wrong?* But in the case referred to, the judges held that the more correct way of leaving the question to the jury would appear to be, “*Had the accused at the time of committing the act a sufficient degree of reason to know that he was doing an act that was wrong?*” If he had, he is not entitled to be acquitted on the ground of insanity. And this is the law at the present day. The definition, however, is almost universally admitted to be unsatisfactory.

Its defective nature and the injustice it involves have been frequently pointed out, but probably never more felicitously than in the illustration put by Lord Erskine in *Hadfield's* case of a lunatic destroying a man under the delusion that he is a potter's vessel, but with the *design* of inflicting a malicious injury on the property of a third person whom he believes to be the owner of the vessel.‡ It is obvious that in

* Stephen's Com.

† Macnaughten's; 10 Cl. and Fin. 200.

‡ Collis, 580; see also “Collinson on Lunacy,” p. 480.

this case the lunatic would know that he was doing an act that was wrong, but that he would be quite unconscious that he was committing, and that he was never intending to commit, an act of a murderous character : yet as the law at present stands, having sufficient perception to distinguish between right and wrong, to know that he was doing an act forbidden by law, he would be unable to escape a conviction for wilful murder.

It is obvious, however, that some definition as to the degree of insanity which should be considered to create irresponsibility for crime is indispensable. I have in this Code defined a lunatic to be "*a person who at the time of committing the act charged against him was (a) under any insane delusion having reference to such act ; (b) under the influence of insanity so as not to be capable of distinguishing the character or quality of the act he was committing.*"

I think it will be readily admitted that this is an improvement upon the present narrow and unsatisfactory definition ; and I venture, moreover, to express a hope that it may be found to be a sound and practically satisfactory solution of a difficult subject.

The other exemption, in which much difficulty has arisen, is the case of a married woman who, under certain circumstances, is exempted from penal consequences for crime upon the ground that the crime was committed under the coercion of her husband.

Ought this exemption to prevail in the present state of society ? I think not.

I rather apprehend that the time has arrived for abolishing this doctrine of marital coercion as applied to crimes. The doctrine is said to be at least a thousand years old in this country; and no doubt was a sound one in times when a wife's personal freedom and property were at the mercy of her husband to an extent which cannot be said to be the case in the present day, when the tendency of legislation is towards placing the two sexes upon terms of equality, affording additional protection to a married woman's property and earnings, and providing for her redress and protection in the case of any cruelty or oppression exercised towards her by her husband.

Moreover, it will be borne in mind that the doctrine that a woman may commit crime with impunity, if done under coercion of her husband, or when in his company, which the law construes a coercion, is variable. Thus, in the case of treason, no presumption of her husband's coercion can avail a woman;* and it is laid down that this is not so much on account of the heinousness of the crime, but because the husband, having committed treason, is not considered to be entitled to any obedience at the hand of his wife. And yet, none the less on that account, he may in fact have exacted obedience to his will.

And it has been doubted whether a woman can be excused if she commit murder under her husband's coercion; whilst it is unquestionably no bar to a conviction for keeping a house of a certain character

* 1 Hale, P. C. 47.

that a woman was coerced and constrained to do so by her husband.

I submit, therefore, that it is preferable to sweep away entirely a doctrine which is out of harmony with the spirit and tendency of modern legislation, and which is so uncertain in its application; and in this draft Code I have acted upon this view. At the same time, it can hardly be denied that the circumstance that a woman has acted under her husband's coercion may be a just ground for mitigation of punishment, although not of absolute exemption from guilt; and accordingly I propose that the fullest discretionary power be given to the Court as to punishment when it is proved, or there is good reason to believe, that a woman has committed crime at her husband's dictation.

Having considered and defined the class of persons who are to be deemed capable of committing crime, and the circumstances under which irresponsibility is to be inferred, the next consideration is as to the class and character of crime.

At present indictable offences are divided broadly into two classes, viz. Felonies and Misdemeanours. The distinction is now admitted to serve hardly any useful or intelligent purpose; whilst to all those having practical acquaintance with the administration of the criminal law it is known to be productive often of needless embarrassment. If in former times the distinction was necessary, that justification has now ceased to exist. Until recently, a conviction for felony involved a forfeiture of all property of which the convict was possessed, but this law was either

evaded or was unenforced, and a more enlightened policy has now swept it away. Certain differences, it is true, still exist in reference to the arrest of persons accused of felony or misdemeanour. Thus, whilst any person may apprehend another suspected of having committed a felony which has in fact been committed, no person can, as a general rule, be lawfully apprehended upon suspicion of having committed a misdemeanour except under a warrant granted by a magistrate or justice of the peace. The absurdity and inconvenience alike of this rule, and of the distinction, will be apparent when it is stated that the obtaining of property by false and fraudulent pretences, to no matter how enormous an amount, and under whatever circumstances of aggravation, is merely a misdemeanour, whilst the stealing of an article of the most infinitesimal value, and under whatsoever circumstances of mitigation, is felony. Whilst, then, the main reasons for the distinction have ceased to exist, the distinction itself remains, causing anomalies and injustice which serve both to confuse the public and to render the criminal law ridiculous. No true Code is, in my judgment, possible so long as this invidious distinction is preserved. I have, therefore, ignored it, and have treated all offences of an indictable character as offences against or contraventions of the Penal Code, assigning to each its *maximum* punishment according to its gravity.

The artificial division of crimes into felonies and misdemeanours is not, however, the chief objection, by any means, to the criminal law as it exists. *

The law of crimes and punishments is divided into three parts : common law, statute law, and case law. The common law consists of traditions reduced into writing in ancient times. The statute law consists of Acts of Parliament from time to time passed by the Legislature. Case law consists of the decisions of the judges given at different periods of our history upon particular cases arising before them, explanatory and declaratory of the other two branches of the law and of equal authority with them. These decisions are scattered through a large number of volumes of reports, without any attempt at arrangement or system.

Thus our criminal law has been built up by three distinct processes, the general result of which has been accurately stated to be that* "*the criminal law of England is founded on a set of loose definitions and descriptions of crimes,*" the most important actually dating back to the thirteenth century. We have, firstly, certain broad general rules of a more or less indefinite character on certain branches of the criminal law. As these have been shown, from time to time, to be defective by judicial decisions, they have been attempted to be supplemented by legislative enactments, which in their turn have been made the subject of decisions by the courts ; the whole producing curious results. Thus, for instance, by the common law, Theft was defined to be *the taking fraudulently, with intent to steal, of the property of another, against the will of him whose property it is.*"†

* Vide "A General View of the Criminal Law of England," by Sir James Stephen, p. 68.

† Glanv. lib. x. c. 13.

This description, instead of having been corrected by the Legislature, and a definition substituted sufficient to cover every case of simple theft, when experience had shown its many imperfections, remains to the present day; but the Legislature has supplemented it by a number of provisions, which in their turn have been made the subject of a variety of judicial decisions, until the law upon a matter really of the simplest character has become so confused as to be utterly unintelligible to the general public, and appreciated only by those lawyers who have made the criminal law the object of special study.

Thus, when in the reign of Edward III. the common law definition of theft came to be applied in practice, its insufficiency was at once manifested. In the first place, it was held to apply to things of a particular class only. A man was indicted for feloniously cutting down and carrying away trees, and it was held* that he could not be convicted of theft, on the ground that the trees were not personal property. At a later period a man was indicted for stealing a box containing charters, and a similar objection prevailed, the Court holding that the charters relating to land were realty, and, wonderful to tell, "that the box followed the nature of the charters."† The next objection under which the common law definition of theft gave way was when it was held that to constitute theft the property must be taken out of the actual possession of the owner. This decision for some time enabled servants to rob their

* *Vide* "A General View of the Criminal Law of England," by Sir James Stephen, p. 68 (citing 3 Ree. Eng. Law).

† *Ibid.*

employers with impunity of property intrusted to them for their masters. It would be out of place to review here all the defects to which the definition gave rise, or the isolated and spasmodic efforts of the Legislature to tinker it, by the enactment of a number of provisions designed to extend it, as particular miscarriages of justice arose. One other instance, however, may be mentioned. In 1857 it was enacted* that, if any person being a bailee of any property shall fraudulently take or convert the same to his own use, he shall be guilty of larceny. It was thought that this provided adequately for the punishment of every fraudulent bailee. But the judges held† that the clause applied only to a case where the actual thing deposited was to be returned, and that therefore a person with whom money had been deposited, who was under an obligation to return the *amount*, but not the *identical* coin deposited, could not be convicted within that section.

As in the case of Theft so with other offences. Thus, the original common law definition of Homicide was, "*the killing of a man by a man.*" Wilful homicide, under certain conditions, was defined to be murder. In turn "*wilful*" was, in course of time, defined by the judges to mean "*malice aforethought*;" and from this definition the fiction "*implied malice*" was invented. This doctrine of "*implied malice*" has so far extended the original definition of wilful homicide as to make it *wilful murder* if a man shooting at another man's poultry, with intent to

* 20 & 21 Vict. c. 54, s. 4.

† *Vide* Reg. v. Garrett, 8 Cox, C. C. 363, and Reg. v. Hassall, L. & C. 58.

steal it, accidentally kills a person he did not see! * Here we have a crime of the gravest character, not created nor defined by the Legislature; as to which, indeed, Parliament has had no voice; it having been created and defined by a combination of the old common law and case or judge-made law. Of this doctrine of "*implied malice*" a learned commentator † in his admirable work, which I have already more than once quoted, has observed that "*stated in plain words it amounted to a device, by which the judges were able from time to time to declare any case of homicide, in which they thought the criminal ought to be hung, a capital crime.*" And certainly no stronger or better instance could be selected to show the power which the judges possess to, in fact, make law under the form of declaring the law; and the extent to which case law prevails in our system of criminal judicature.

It may be convenient that I should now state the course I have pursued in framing the Penal Code. One illustration may suffice; for instance, the crime defined by the Code as *Theft*. Under the present law the crime popularly spoken of as theft is called *larceny*. The law, however, distinguishes a variety of forms of larceny; *e.g.* simple larceny; larceny from the person; larceny in a dwelling-house; larceny by a bailee; larceny by a servant; larceny by persons occupying a variety of positions, private or official, each one being the subject of special statutory enactment; and larceny of various property which, not having been larceny in the contemplation

* Foster, 258.

† Sir James Stephen.

of the common law, has been provided for by a number of statutory enactments. There is also the offence of *embezzlement*, a statutory offence which it was found necessary to create to meet the case of a servant misappropriating property received by him on account of his master, such a person having been held to be not liable to conviction for larceny upon the ground that the property stolen had never been in the actual manual possession of the master. This distinction between the offence of *larceny* by a servant and *embezzlement* has given rise to much difficulty, one illustration of which may be afforded by stating that although upon an indictment for larceny, the accused may be convicted of embezzlement and *vice versâ*, yet if the jury should find the accused guilty of embezzlement, and it should turn out that the offence amounted in fact to larceny and not embezzlement, the conviction must be quashed and guilt remain unpunished. On the other hand, there are at present acts which are clearly of a highly penal character, but which cannot be reached by our present criminal law.

This state of things can obviously only be remedied by embracing within one simple enactment all offences of a cognate character. But herein lies the difficulty; for on the one hand the definition must be sufficiently elastic not to permit the escape of a real criminal; but on the other hand so guarded as to secure that acts which, however wrong, ethically regarded, are not and ought not to be considered criminal within the meaning of a Penal Code, shall not be improperly elevated into the category of Crime.

I have, therefore, brought within the definition of *Theft* every act which is at present, either by statute or at common law, larceny of whatever character or degree. This, taken in connection with a very comprehensive definition of the term *property*, which is contained in the Code, will, I believe, be found to include every case which is now covered by the common or statute law under the heads of larceny, embezzlement, and the like, whilst at the same time preventing such failures of justice as have arisen in consequence of the construction borne by certain of the enactments at present in force.

It will, furthermore, include offences at present known as frauds—the most often recurring of which is the offence of obtaining property by false pretences. Critically considered, there is hardly any moral distinction between stealing the property of another, which is in law larceny, and inducing the owner to hand over the same property by means of false and fraudulent representations, but for which he would not allow his property to be taken away. And for some purposes, and under some circumstances, it is so regarded even now by our law. Subtle distinctions, however, have arisen as to whether a particular set of facts constitute in law larceny, which is felony; or fraud, which is a misdemeanour. I propose entirely to abrogate all distinction, and to bring the offence of fraudulently obtaining property by false pretences within the category of *Theft*.

Theft, under certain circumstances of aggravation, is more properly speaking *Robbery*; and certain aggravated forms of theft, including the demanding

of money by menaces, at present a separate and distinct offence, are so defined.

The law relating to treason and homicide is entirely recast; obsolete offences, the very existence of which is unknown to most persons, are abolished; and the entire common and statute law in relation to crimes and offences is collected together, simplified, and brought into harmony with modern thought.

These observations and illustrations will explain the principles upon which I have proceeded sufficiently, I hope, to make them clearly intelligible to those readers who do not belong to the profession of the law. To those who may bring to bear upon the subject minds stored with legal knowledge, they will, I hope, however superfluous, not appear impertinent. These will naturally look to the Code itself, and will hardly weigh its prefatory observations. I venture, in all modesty, to bespeak considerate criticism for a work to which I have devoted the utmost of my humble ability that it might not be entirely unworthy of its great subject—the Crown Law of England.

In that portion of the Code which deals with Procedure, the following will be found to be the principal amendments effected:

1. The establishment of a Supreme Court of Criminal Judicature, embracing,
 - (a) A High Court of Criminal Justice.
 - (b) A Court of Criminal Appeal.
2. Provision for the trial of accused persons committed to the Assizes at short and regular intervals.

3. The abolition of Inquest by Grand Jury.
4. The modification of the present cumbrous and technical form of Indictment, and the substitution of a simple *Act of Accusation*.
5. The right in certain circumstances to trial by Special Jury in criminal cases.
6. Amendments in the Law of Evidence.
7. Power to order Inspection, Views, &c.
8. Alteration of the law as to Admission in criminal cases so as to economize the time of witnesses.
9. Power to award a New Trial, or to enter the verdict for a defendant in certain cases.
10. Amendments in the Procedure and Jurisdiction of Magistrates and Justices in respect of Crimes and Offences.

The key to the whole system of Procedure suggested lies in the establishment and constitution of a separate Court of Criminal Judicature. The more the matter is considered, the greater, I believe, will be found the difficulties of, and objections to, any proposed system which does not start with a reform of this kind. The establishment of such a Court will assuredly lend increased dignity to the administration of criminal justice, in itself a matter of no mean importance; whilst it would be impossible to carry out effectually several matters of important detail, as to the necessity for which little, if any, divergence of opinion exists, if the criminal law is to be left, as at present, to be administered by various

tribunals, local and otherwise, and of varying degrees of authority, and with no greater correction than such as is exercised by the action of the Queen's Bench Division of the High Court of Justice, or the Court for the Consideration of Crown Cases Reserved.

In proposing the establishment of a Supreme Court of Criminal Judicature I have followed the example set in the recent civil Judicature Acts. The present Code provides that there be established a Supreme Court of Criminal Judicature, to consist of two branches, viz. one known as the High Court of Criminal Justice, having original jurisdiction and an appellate jurisdiction over inferior courts of criminal justice; and the other to be called the Court of Criminal Appeal, and possessing, as its name denotes, appellate jurisdiction in criminal cases. If it be objected that it is undesirable to establish two Supreme Courts, one dealing with civil, the other with criminal business, I would point out, whilst not sympathizing in any way with the objection, and prepared to defend, on several grounds, the establishment of a separate Supreme Court of Criminal Judicature, that the plan proposed may be so far modified as to constitute in lieu a Criminal Division of the present High Court of Justice; and to give a right of appeal to the existing Court of Appeal, but composed of the same number and description of judges as is contemplated by this Code in the case of the suggested Court of Criminal Appeal.

The Code then provides for the creation of three new judges who would be judges of the High Court of Criminal Justice exclusively, upon which the

present judges would cease to have imposed upon them the duty of trying prisoners. In favour of this relief, I would point out the great public benefit that would ensue in the transaction of the civil business of our Courts of Law. At present there is a block in what are known as the Common Law Divisions; the arrears of business are considerable; causes set down for trial several months ago have not yet been reached; and whilst some optimists appear to think this is a merely temporary state of things, caused by the inauguration of a new system of judicature, the better opinion would seem to be that an increase in the number of judges is sooner or later indispensable.*

Now it will not be disputed that if the judges of the Common Law Division had not to attend at the monthly sessions of the Central Criminal Court, and had not to try prisoners at the Assizes, their present number would be sufficient for the prompt and efficient discharge of civil business; causes would be expeditiously tried; the present arrears would disappear, and the full benefit of the new system of judicature would be brought home to civil suitors. It would then be no longer necessary to send Queen's Counsel as paid commissioners to try prisoners throughout the country—a plan which,

* These observations were written prior to the commencement of last Michaelmas sittings (1877). Since then very much has been done, and the arrears have disappeared or are disappearing. This is due in part to exceptional arrangements, but more so to the general stagnation of trade, and the checking of litigation induced by the impression of dilatoriness which has been created in the public mind by the accumulated arrears of causes waiting for trial. I adhere, therefore, to the view above expressed, which was not founded upon merely ephemeral considerations.

whilst it may be defended on grounds of temporary expediency, is open to grave objection, which has already found expression from public bodies and in the public press.

Three judges would be sufficient for the trial of prisoners throughout England and Wales for all crimes and offences over which the Courts of Quarter Session have not jurisdiction. They would be required to hold a monthly session at the Central Criminal Court for the trial of all such cases as are not triable by the Recorder or the Common Serjeant. The public scandal and the injustice of accused, and presumably innocent, persons being kept in prison for several long and weary months would then be unknown; the Code providing for the holding of a court of oyer and terminer and gaol delivery in or for every county throughout England and Wales in every second month.

To the judges of the proposed High Court of Criminal Justice—or of a Criminal Division of the present High Court of Justice, if this latter description should be preferred—sitting as a Divisional Court, or to any two of them, would be made all applications in the first instance for a new trial, or to enter a verdict for a defendant found guilty upon evidence insufficient to support an adverse verdict. As in civil cases, there would be an appeal from the decision of the Divisional Court which would lie to the Court of Criminal Appeal.

It is proposed that the Court of Criminal Appeal should consist of the Lord Chief Justice of England, the Master of the Rolls, the Chiefs of the Common

Law Divisions of Exchequer and Common Pleas, and the Lords Justices of Appeal; and power is given to Her Majesty (if she shall think fit) to add to these not more than three additional judges, selected from the judges of the High Court of Justice, or from those who have filled the office of judge of the High Court of Justice, or judge of the High Court of Criminal Justice.

To the Court of Criminal Appeal would, of course, be transferred the jurisdiction and powers of the *Court for the Consideration of Crown Cases Reserved* and of the Court of Appeal in writs of error.

The Court would be empowered to sit in two divisions, provided that each division be composed of not less than five judges, of whom one must be the Lord Chief Justice of England, the Master of the Rolls, or the Chief of one of the other Common Law Divisions. As in civil cases, an ultimate appeal is given to the House of Lords; but this only where the Court of Appeal is not unanimous; or where that Court gives leave to appeal from its decision.*

I submit that this, whilst interfering as little as

* Few, if any, propositions of law arising in civil litigation, exceed in importance the point argued before the Court for the Consideration of Crown Cases Reserved in the case of the *Franconia*; in which *seven* judges decided in favour of the law contended for, with conspicuous ability, by Mr. Benjamin, Q.C.; whilst *six* judges gave judgment in the opposite direction.

It was, at the time, very generally regarded as a serious blemish in our system that a question of law of national and international importance, and upon which opinion amongst the judges was so evenly balanced, could not be taken to the House of Lords for final decision, as it could and assuredly would have been had it arisen in the course of civil instead of criminal litigation.

possible with the existing system, would give the country a Court of Criminal Appeal which would be eminently satisfactory, and which would certainly command universal confidence and respect. It remains to be considered whether on other grounds the plan proposed is open to any serious objections.

It is objected to the establishment of any Court of Criminal Appeal in this country, that every person convicted of an offence would of a certainty apply for a new trial if he could afford to do so; that criminal business would be thereby largely increased; and that in the case of those who could not afford to appeal no remedy would be supplied. In other words, that multiplicity of business and increased advantages in favour of well-to-do criminals would be provided, without any corresponding benefit to the humbler class of persons accused of crimes. I do not share in these objections.

It is obvious that in any system of judicature, civil or criminal, the wealthy or well-to-do will have of necessity some considerable advantages over their poorer brethren. But because a rich man may be opposed in civil litigation to a poor one, has this ever been proposed as a reason for depriving the former of the power to appeal against a verdict opposed to law or not justified by the evidence? The policy of just legislation is to give equal rights to all, though inevitably in practice the exercise of those rights will, in many instances, be influenced, either favourably or unfavourably, by the circumstances of particular individuals. But beyond this, in the proposed system of appeal, the right will be

brought within the reach of all, even the most humble.

The cases in which, if this or any fairly framed Code were in operation, accused persons would be undefended by counsel, would be rare, and the expense of a motion to the Divisional Court (sitting at the very place where the trial took place) for a new trial should be very trifling. Even if this were followed by a motion to the Court of Criminal Appeal, the expense would only be slightly added to; whilst in any case in which the Divisional Court, or the Court of Appeal, is of opinion that there has been a miscarriage of justice, and that there ought to be a new trial, it is obviously desirable that the Court should have power to order the costs of the appellant to be paid in the same way as the costs of prosecutions are now ordered to be paid, and a discretionary power is given accordingly; and there is a general provision giving the Court or any judge the power to assign, at any stage of the proceedings, counsel or solicitor, or both, to any accused person, who by reason of poverty is unable to obtain professional assistance; so that the provisions of this Code cannot be defeated, nor injustice done, by reason of the poverty of any person. Moreover, an application for a new trial could be made in person, without the intervention of counsel.

Then as to multiplicity of business, I do not apprehend any difficulty. It would very soon become known in what cases, and on what principles, the Court would grant a new trial, and in practice the large majority of motions would certainly be made

by counsel, who, in deference to their own reputation, may be trusted not to make frivolous applications. Where the Court is of opinion that there has been a miscarriage of justice, and that there ought to be a new trial, the time that such new trial would occupy cannot be a consideration as compared with the injustice of the conviction of an innocent person.

If in civil causes a verdict were final ; if there were no right of new trial ; no power to review a verdict upon the face of it unjust ; and if, for the first time, it were proposed to create a new system, and to give a power of awarding a new trial, in certain cases, in criminal cases only, it appears to me the proposition would have much to recommend it. It would be easy to adduce arguments in support of the proposition that, where the life, liberty, or reputation of a person is at stake, in view of the fallibility of human nature, a jury may err, and it may be expedient to grant a trial before a fresh jury. An accused may have been taken by surprise by evidence unexpectedly called against him ; a witness for the defence may be unexpectedly absent ; other circumstances or considerations may arise to make it just and expedient to grant a new trial where there is a doubt as to the guilt of the accused. Where, instead of a man's life or honour—of everything that he holds most dear in the world—being at stake, the whole question at issue is as to whether A. detains from B. fifty pounds or its equivalent, there may be reasons of expediency for reducing the power of litigation, and enacting that, having regard to the smallness of the amount involved, as compared with the value of

public time, a verdict of a jury shall be final and conclusive. But such is not the law.

In every civil cause, however small the interests involved, the litigants have the absolute indefeasible right of applying for a new trial. It is difficult, then, to understand upon what true principles it should be a portion of the law of England that, *under no circumstances whatever*, can a new trial be had in a criminal case;* and that if a jury pronounce a verdict dictated by passion or prejudice, or ignorance or mistake, or upon the face of it senseless and unjust, the person against whom it is pronounced is without appeal or redress; his life declared forfeited perhaps; his liberty restrained; his honour blighted; his prosperity and prospects ruined; nothing left but an appeal to the clemency of the Crown—a clemency which, even if it be extended, comes in the form, not of rehabilitation to an injured and innocent man, but as an act of grace; in the most illogical form of a free *pardon*: pardon for an offence which has never been in fact committed!

But it is said that if a new trial might be had by a defendant in a criminal case it could not be properly withheld from the prosecutor; and that thus a person acquitted by a jury might be liable to

* I am here dealing with the law and practice of the ordinary criminal courts of the country, and it is, therefore, unnecessary to refer to the exceptional practice in the rare instances of criminal trials taking place in the Queen's Bench, except to point out that if it be right in such cases, with all their attendant advantages, to give a defendant the right to apply for, and, if the Court thinks it right, to have a new trial, the argument I advance in favour of a new trial in every instance in which it is right and just is an *à fortiori* one.

be again tried for the same offence—a course which would be a violation of a most important principle of English law, that no man shall be twice put in peril upon the same charge. This contention, however, ignores the radical distinction that exists between civil and criminal cases. In civil cases, if it is lawful for a defendant to have a new trial, it must obviously be lawful for a plaintiff also to have a similar privilege. Here it is a mere dispute between two citizens, which concerns themselves exclusively. But in every criminal case, the Crown is technically the prosecutor; it is no longer, as in civil litigation, a struggle between two equals, possessing equal rights and privileges. It is a trial in which the prosecution has undertaken to bring home a crime to the accused. The whole policy of a just system of criminal law rightly is, under such circumstances, to give certain privileges to the accused, the equivalent of which is not reserved to the prosecution. If the prosecution fail in the object they have deliberately undertaken; if the jury are of opinion that there is a sufficient element of doubt to make it their bounden duty to acquit, the result is and should be final. But if an accused be wrongly convicted, or if there be a doubt as to whether the conviction is just, he ought clearly to have the right of new trial. I would submit, in conclusion, upon this question that whilst there are doubtless arguments, some minor ones of which I have not thought it necessary expressly to refer to, upon which there is a difference of opinion, and whilst some whose opinion rightly commands the greatest respect, may not agree in all that I have advanced, the balance of

argument and of policy is in favour of giving to a properly constituted Court a discretionary power to grant a new trial in criminal cases to a defendant, where there are circumstances that, in the opinion of the Court, warrant that course.

Before proceeding to the consideration of other suggested amendments in the procedure of our criminal courts, it may not be superfluous that I should sketch in brief outline its main features and characteristics, with the view to their appreciation by those who are not familiar with the existing procedure.

A prosecution against a person charged with having committed crime is ordinarily commenced by the accused person either being taken into custody or apprehended upon a warrant granted by a magistrate or justice of the peace. In either case the witnesses for the prosecution are then examined in the presence and hearing of the accused, who is entitled to be represented by counsel or solicitor, and to cross-examine the witnesses called against him. The evidence is reduced into writing by the clerk to the magistrate or justices, and read over to and signed by the several witnesses, and when so reduced is spoken of as the depositions. The accused may be from time to time remanded. If the magistrate (or justices) be of opinion on the close of the prosecution that, upon the evidence, a sufficient case is made out to justify the accused being sent for trial before a jury, the accused is committed for trial either to the Quarter Sessions or to the Assizes, according to the nature or gravity of the offence ;

or, in the case of offences committed within its jurisdiction, and of a kind which in the country are sent for trial to the Assizes, to the Central Criminal Court. The prosecutor and witnesses are bound over by recognizances to appear and prosecute and give evidence, and the accused is either remitted to prison pending the trial or admitted to bail.

In certain cases bail is in theory the absolute privilege of an accused, although its amount and other incidents are left to the discretion of the magistrate or justices, who, moreover, in the case of certain offences have an absolute discretion either to admit to or refuse bail as to them may seem fit.

An appeal lies to a Judge of the High Court of Justice either against the refusal to admit to bail or against the amount of bail fixed if it be deemed excessive. In practice, however, the Judges refuse to entertain any such appeal pending remand, or until after the evidence has closed and a committal has taken place.

The procedure in the case of preliminary examinations of persons accused of indictable offences is mainly regulated by an Act of Parliament passed in 1848,* and popularly known as *Jervis's Act*.

At the close of the evidence for the prosecution and before committing any accused person for trial, it is the duty of the magistrate or justices, to address the accused in these words: "*Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down*

* 11 & 12 Vict. c. 42.

in writing, and may be given in evidence against you upon your trial,”—an harangue the curious wording and construction of which constitute perhaps its least objection, being to an untutored person mostly unintelligible. In addition to this, it is the duty of the magistrate or justices, before the accused makes any statement, to give him clearly to understand that “*he has nothing to hope from any promise of favour; and nothing to fear from any threat that may have been holden out to him to induce him to make any admission or confession of his guilt; but that whatever he then says may be given in evidence upon his trial, notwithstanding such promise or threat.*”

Thus the strictest care is taken to guard against an accused making any statement; a guilty man being ordinarily advised to say nothing lest he should assist in proving his own guilt; and a timid, and perhaps innocent, man being deterred by this extraordinary formula, solemnly addressed to him from the bench, from saying anything after so much caution to hold his peace.

The accused can neither be examined by the prosecution, nor may any single question be addressed to him by magistrate or justices, either to prove his guilt or to vindicate his innocence; he may not be examined even at his own request; and when represented by counsel or solicitor, is compelled to stand a mute and passive spectator of a scene in which he has the deepest interest.

Until a comparatively recent period a most serious defect, and one productive of much hardship and injustice to accused persons, especially when in

humble circumstances, existed in the law governing the procedure as to the preliminary examination of persons charged with indictable offences. There was no power given by *Jervis's Act* to take the deposition of any witness for the defence, or to bind over any witness to appear and give evidence at the trial on behalf of an accused. The result was, that accused persons were frequently upon their trial deprived of the power or opportunity of calling witnesses in their defence. To the humanity and exquisite sense of justice of the very able and distinguished Recorder of London,* it is due that this stain upon the administration of criminal justice has been removed. In 1867 he introduced into Parliament and carried a measure usually spoken of as the "Recorder's Act," by which it was provided *inter alia* that the evidence of any witness able to depose to facts on behalf of an accused person shall be reduced into writing, and the witness bound over to attend and give evidence at the trial, in the same manner as the witnesses for the prosecution, and providing for the payment of the expenses of such witnesses.

This provision, valuable as it is, as compared with the state of things previously existing, is still defective in practice, limited as it is to those witnesses only who are called and examined at the police court; and affording no facility to accused persons to secure the attendance, or at least making no provision for the payment of the expenses, of witnesses

* It is almost unnecessary to state that reference is here made to the Right Hon. Russell Gurney, Q.C., M.P., who, however, since this preface was written, has resigned the office of Recorder of London, which for many years he so worthily filled.

at the trial whom, subsequent to their committal, they are advised, possibly for the first time, are necessary and material for their defence. Clauses will be found in this Code which may be regarded as completing the measure of justice inaugurated by Mr. Russell Gurney.

A committal for trial having taken place, the depositions are transmitted to the Court in which the trial is to be held, and upon payment, and upon payment only, the accused is entitled to be supplied with a copy of such depositions. The next step is to prefer what is called the Indictment before the grand jury; and where there are several charges against the accused, it is often necessary to prefer as many separate indictments. The witnesses for the prosecution are required to appear before the grand jury, and as a rule a "*true bill*" is returned as a matter of course. This system is known as the "*Inquest by Grand Jury*," an institution which this Code would abolish, upon grounds which will be presently stated. A true bill having been returned, the accused is called upon to plead, that is to say, to declare whether he admits himself "*Guilty*" of the charge preferred against him, in which case he is sentenced, without the necessity for the witnesses being heard by the court and jury; or, if he plead "*Not Guilty*," the trial proceeds, and the burthen is then cast upon the prosecution of proving, in accordance with the rules of law, and to the satisfaction of the jury, that the accused is guilty of the charge stated in the indictment. Upon this trial, as in the preliminary examination, the accused is expressly declared by

law to be incompetent to be examined either by the prosecution or in his own behalf. Furthermore, the husband or wife of an accused person, or the husband or wife of any person jointly accused, is an equally incompetent witness both in the inquiry before the magistrate and at the trial, and cannot, according to the present law of evidence, be admitted as a witness either for the prosecution * or in aid of the innocence of the accused. A person occupying ostensibly the position of husband or wife of an accused, but not actually so in law, is under no such disability, a circumstance furnishing in itself no mean argument in favour of a change in the present law of evidence—a change which is proposed to be carried into effect by the present draft Code of Criminal Procedure. The results produced by the existing law and practice of closing the mouth of an accused, and placing the husband and wife under similar disability, and the consequences which would ensue from its alteration, will be fully dealt with hereafter.

It has been already seen that the verdict of a jury in a criminal case is absolutely final,† and without appeal, except in so far as it may be reviewed by the Home Office, and dealt with by the prerogative of mercy exercised by the Crown. The remedy for this state of things by the creation of a Court of Criminal Appeal, and the constitution and procedure

* The principal exception to this rule is where bodily violence has been inflicted by an accused person upon his or her husband or wife, in which case such husband or wife is a competent and compellable witness.

† A mere question of *law* may be reserved for the decision of the *Court for the Consideration of Crown Cases Reserved*; and a writ of error will lie for any defect apparent upon the face of the record.

of the Court, have been already dealt with and explained. It will be convenient at this point to revert to the institution of *Inquest by Grand Jury*, and to state the grounds upon which its abolition is recommended.

In former times the institution was of great importance; but having given way to an improved system of procedure, its retention, side by side with the new system, has become an anomaly. For, as we have seen, a carefully conducted preliminary investigation takes place before a stipendiary magistrate or justice of the peace in the case of, practically, every accused person. The accused possesses the right to be professionally represented and to call witnesses for his defence. The magistrate or justice, as the case may be, after hearing all that can be rightly urged upon either side, arrives at the conclusion that there is a *primâ facie* case, at least, which ought to be subjected to the consideration of a jury. But after this, and before the case, on the part both of the prosecution and the defence, can be submitted to a jury, it is indispensable by our present law that a true bill should be found by the grand jury. The grand jury are only permitted to have before them the witnesses for the prosecution; their duty is limited exclusively to saying whether, upon the evidence of the one side called before them, the accused ought to be put upon his trial, a question which has already been determined, under circumstances much more favourable in the interests of truth and justice, by the magistrate or justices. The accused is not even represented before

the grand jury ; their deliberations, such as they are, are conducted in secret. In many cases there is no guarantee that the facts are even properly laid before them. However, in the overwhelming majority of cases a true bill is returned, an almost necessary corollary of the committal for trial of the accused, since in any case in which a conviction is improbable it is the duty of the magistrate or justices to refuse to commit. By way of very rare exception, the grand jury throw out a particular bill, or in other words pronounce that, in their judgment, the accused ought not to be put upon his trial, notwithstanding that there has been an inquiry in the magistrate's court, where, both sides being heard, the contrary proposition has been affirmed.

Upon the face of it, then, this inquest by grand jury would appear to be, to say the least, a most unnecessary proceeding. It entails upon the witnesses for the prosecution a loss of time often greater than the trial itself. Grand juries have repeatedly made presentments calling attention to the uselessness of the functions they are called upon to perform. But the system continues, and one ground upon which its continuance is justified is entitled to consideration. It is said that it is very desirable that the class from which grand jurors are selected should be associated in the administration of criminal justice. Granted. But can it be desirable to make that class feel that the duty it is called upon to perform is ridiculous, as well as far less responsible in fact than the duty of those jurors of lesser station, distinguished as the *petit* jury, who have to pronounce the

real verdict of *guilty* or *not guilty*? Or, on the other hand, is it not more desirable to abolish a practice which has little more than its antiquity to recommend it, and to associate that most important body from which grand jurors are drawn with the real and most responsible exercise of the criminal law?

Upon the trial of any civil cause, either litigant has the right to have the matter in dispute tried by a special jury. The dispute may have reference to a few pounds alleged to be owing, or to some question which, when appraised by its money value, may be found to be satisfied by the smallest coin known in the realm. But in a case literally of life or death; however vast the issue; however difficult and important the questions to be tried; even though the issues involve the consideration of evidence the most complex or scientific, of matters the most difficult the human mind can embrace; a common jury is not only deemed sufficient, but a special jury, which is a matter of right where a merely pecuniary question is involved, may not and cannot be empanelled. It is unnecessary almost to refer to the single exception to this rule, except it be the more emphatically to ensure the condemnation of the present practice. By obtaining what is called a *certiorari*, in very special instances, a criminal case may be removed into the Queen's Bench division, and tried before a special jury. Why, if a special jury be a fit tribunal, it should not be had except by this most costly and dilatory method, has never yet been satisfactorily explained. But a *certiorari* to remove an indictment into the Queen's Bench division is

hardly ever applied for, and still more rarely granted. A few simple provisions would render any such application wholly unnecessary, and yet would give to accused persons all the advantages at present reserved to the favoured few who, enjoying wealth or social position, or on other grounds, are able to procure for themselves an exceptional mode of trial.

The law of England theoretically secures to every individual the right to be tried by his *peers*. Upon this principle every peer of the realm charged with treason or felony is entitled to be tried by the House of Lords. But every person—whatever his position—if he be not a peer of the realm, and if charged with a criminal offence, can only, with the exception referred to, be tried by a common jury, a tribunal not considered competent even to try a very large proportion of the civil causes. The result is that an accused person is often tried for an alleged offence, perhaps of the greatest gravity, by a jury selected from a class who have positively hostile sympathies. In a Government measure introduced in 1873 this injustice was proposed to be remedied, a clause in the Jury Bill brought in by the then Attorney-General in that year, proposing to enact that in every criminal trial either prosecutor or defendant should have the right to a special jury. This Code provides that a special jury may be awarded in any criminal trial which shall be fit to be tried by a special jury upon the application of either the prosecutor or defendant; and a special jury, in criminal cases, is to be selected from the class who are now qualified and liable to serve upon the grand jury in any county in England or Wales.

Provision is also made for empanelling a mixed jury, composed in part of special in part of ordinary jurors, which would constitute a fair tribunal in trials, for instance, involving class disputes; and, in a case involving scientific evidence of exceptional difficulty, the jury may be composed in part of jurors possessing special scientific knowledge, in accordance with a principle which has been already recognized by our law in the powers given to call in assessors in civil cases.

I now approach the consideration of a question I have already briefly adverted to, and which has of late years excited much discussion, and as to which more divergence of opinion probably exists than upon other reforms which I have mentioned—*Ought accused persons to be examined?* and as subsidiary to this, the main question: *if so, should such persons be compellable or merely competent to give evidence on their trial?* and, in either case: *should such evidence be given under the sanction of an oath, and with its consequent responsibility if an accused should swear to that which is false?*

I confess to having at one time inclined to the opinion that an accused should be neither competent nor compellable to give evidence in his own case. The humane doctrine of English law that no man shall be bound to criminate himself; the practice in those countries where accused persons are examined and browbeaten; the encouragement to the commission of perjury; seemed to me formidable objections.

But further reflection and experience have satisfied

me that, regarded either from the standpoint of what is best calculated to bring home guilt to the guilty, or to protect the innocent, the present system of closing the mouth of an accused is impolitic and productive of much injustice.

In determining whether the present system or its reform be better calculated to promote substantial justice, the question must be considered in a twofold aspect. In the first place, would the alteration promote the conviction of the guilty with increased certainty and convenience? and next, even if this be affirmatively answered, more important still, would a change which would admit or subject accused persons to examination, be prejudicial to innocent persons so as to render them more liable to unjust conviction? I apprehend it will not be disputed by any one whose opinion is of importance, that it would be equally impolitic and unjust to attain any degree of certainty or convenience in the conviction and punishment of the guilty by the creation of any additional hazard to those who may be innocently accused of crime. In point of importance, therefore, the latter question should be first considered and answered, since, if answered in one sense, no amount of demonstration that fewer guilty persons would escape under a system by which accused persons would be liable to be interrogated on their trial would justify the change being resorted to. The policy and humanity which find expression in the sentiment that it is better that ten guilty men should escape rather than that one innocent person should be convicted, is an integral part of our law,

because it is the outcome of the conscience of the nation, and it will be an evil day for England if the sentiment should ever be weakened or impaired.

Now, *primâ facie*, it would appear that a system under which a person wrongfully accused is able to be examined, to give his own account of the transaction, and to afford explanations of anything that appears suspicious against him, must be more advantageous to an innocent person, and more calculated to enable him to free himself from the unfounded suspicion of guilt, than a system under which his mouth is closed : under which he is compelled to be a mute spectator ; his defence being left to an advocate whose explanations of matters which appear suspicious against his client are often very probably regarded as the explanations suggested by an ingenious mind, rather than the actual exposition of facts presented to the jury as the statement of the accused himself. But considered not by what appears to be, but by the light of actual experience, it is objected that the large majority of accused persons would be prejudiced by examination ; that habits of truth not being a natural characteristic of the majority of those who are charged with crime, they would probably tell what they considered a plausible rather than a truthful tale ; and that in the case of the better disposed, the greater the consciousness of their own innocence the greater would be their apprehension, and consequent confusion of thought and expression ; and that with every desire to give a truthful and accurate account, they would break down under the anguish and apprehensiveness

of the position and danger in which they were placed. It may be convenient to examine these objections before stating others.

To the first objection it is probably sufficient to answer that, if a person will prefer to exert his cunning, and what he is pleased to consider his ingenuity, instead of adhering to the plain narrative of truth, he has only himself to thank for any consequences which he may thus bring on his own head. But I may be permitted to express a doubt whether the objection is true in fact. A guilty man might no doubt seek to escape by inventing a story which, being invented, would probably crumble to dust under judicious cross-examination. But why should an innocent man not tell the truth? Many will have witnessed the anxiety expressed on the countenance of accused persons when a counsel has been putting an elaborate or ingenious hypothesis to a jury, instead of the straightforward explanation given by the accused himself—a method adopted because the truth would not perhaps harmonize with a defence skilful but disingenuous. They may more frequently have seen the mental anguish of a prisoner when a judge is impressing upon a jury, in his summing-up, that no explanation of a particular and apparently conclusive fact against the accused has been given; the silent, but imploring, appeal to counsel to interpose and enable the prisoner to explain the circumstance; movements unobserved by the judge, because, turned towards and speaking to the jury, he is necessarily turned from the prisoner. This, at least, would be impossible, if accused persons were ex-

amined. Every point that seemed to require answer or explanation would be put to the accused, who, at all events, would be offered the opportunity of answering with truth.

The other objection is more captivating, and appeals to our sympathies; but is it true? There are instances repeatedly occurring in our courts where the most painful and sometimes wholly-unfounded imputations are made, or where persons of highly sensitive and nervous temperament are witnesses; and both these classes are compelled to undergo examination and cross-examination; and cross-examination too of a character which never could be permitted to be used in this country towards a person standing upon his trial for crime. Whatever else may happen, it is not suggested that there is miscarriage of justice by reason of these classes of witnesses being overwhelmed, so as not to be able to give a full or truthful account. No doubt the cases are not quite identical. The case of a prisoner who has been confined in prison, who is illiterate, who is possibly unrepresented by counsel, is not on parallel lines with that of a person accused, no matter of what serious misconduct, whose liberty is unrestrained and unjeopardized, who has the benefit of culture, and the advantage of perhaps the highest professional assistance. True; but the difference is only one of degree, and the one case affords sufficient psychological experience to enable us, I submit, to dismiss the objection that any number of innocent persons would become liable to conviction from hesitation or failure of nerve or courage when put in

what I believe, on mature consideration, must be seen to be the most advantageous position for vindicating their innocence.

Having then, I hope, established that the change would confer a benefit upon persons innocently accused, upon the other branch of the question—viz. would the change bring home guilt to the guilty with greater convenience and certainty?—there is much less difference of opinion. A consciously-guilty man, aware that the technical proof required to convict him is meagre, if well advised, stands purely upon the defensive, and his defence is limited to picking holes in the case for the prosecution. Instead of any explanation being offered, it is simply argued on his behalf that the case against him is not conclusively made out. “*Give you evidence, gentlemen! Explain to you matters which may appear suspicious against the prisoner!*” exclaims his counsel, in a burst of forensic indignation; “*why, the only evidence I could call, the only person in the wide world that could be called, to explain these matters is the prisoner at the bar. But the law will not permit me to call him. His mouth is closed.*” And then follows an exhortation to the jury to believe that if only half-a-dozen questions could be put to the accused, his innocence would be forthwith manifested. Dismayed, indeed, would such a one be if it were possible to subject him to the test, the deprivation of which by the law is being held up by his counsel as a hardship.

The missing link in the chain of evidence for the prosecution would be supplied out of the mouth of

the guilty one, and instead of an acquittal because guilt cannot be strictly proved, a righteous conviction would be obtained.

One other result would also be secured. In many cases, and especially where the evidence is exclusively of a circumstantial character, a vast responsibility is thrown upon the jury, and even when a verdict has been given a sensitive man may well ponder whether he may not have erred, with whatever scrupulous care he may have endeavoured to discharge his duty. But in such a case the demeanour of the accused under examination, the character of his evidence, would go far towards setting at rest any such doubt; whilst where a confession of guilt proceeded from the lips of the accused himself, there could be no room for doubting at all.

A more substantial benefit would be arrived at, if, as I have no doubt it would, the change led to many prisoners pleading guilty from the knowledge that they must, out of their own mouths, admit themselves so, instead of, as at present, taking the chance of the prosecution breaking down upon some imperfection of proof; or, even if convicted, taking refuge in the reflection that they can nevertheless continue to assert their innocence, and declare that they owed conviction to the partiality of a judge or the blundering of a jury.

But there are further considerations, the importance of which cannot be overrated, and without taking into account these a safe opinion as to the expediency of interrogating accused persons cannot be arrived at. Stated tersely they are as follows :

1. Assuming it to be desirable to remove the disability of an accused person to give evidence, Should he be merely competent to do so, or not only *competent*, but *compellable*?
2. Should such evidence be given *on oath*?
3. Should the accused be liable to cross-examination, and if so (*a*) by whom should it be conducted, and (*b*) what should be the limits of such cross-examination? Should it extend merely to examination upon the account given by the accused, or should such accused be liable to be cross-examined *to credit*, the same as any ordinary witness?

It is common experience that, as a general rule, the whole truth is only elicited in our courts of justice after three separate processes, which, for the information of those not conversant with the practice in courts of law, it may not be misplaced if I explain. They are: (*a*) evidence in chief, which consists of the first deposition of the witness, and unfolds generally his knowledge, given in the manner most favourable to the side on which he is called; (*b*) cross-examination, which is an examination conducted by the opposite side to that on which the witness is called, and which is directed with a view to show that the witness is inaccurate, omissive, or untruthful; to accomplish which result it is lawful not only to cross-examine upon the facts bearing upon the issue to be tried, but under a legal doctrine known as cross-examination *to credit*, to go through almost

every incident of the witness' life, with a view to destroying his character with a jury by showing, or attempting to show, that the witness is not worthy of belief upon his oath: thus a man who for upwards of a quarter of a century has borne an honoured life and name, and who has given his testimony with scrupulous accuracy and veracity, is liable to have questions put to him as to some indiscretion which he may have committed, or which it is suggested he committed, in his youth; and judges, whilst expressing their personal loathing at a course not really pursued perhaps in the interests of truth, but for the gratification of personal malice or some other equally unworthy feeling, declare in the same breath that they cannot, in the present state of the law, stop such questions; (c) re-examination, which consists of questions which must arise out of those put in cross-examination, and which are directed to explain any apparent inaccuracies or discrepancies between the examination-in-chief and the cross-examination, and to supplement any answers given to questions put in the course of the cross-examination, so that the whole meaning of the witness may be brought out and rendered plain. Hardly any portion of the examination of witnesses is more important than the re-examination, particularly when a witness has been subjected to a really skilful cross-examination; a great part of the merit of which consists not in the elicitation of the whole truth, but in so framing questions as to obtain answers, on the face of them, favourable to that side which is represented by the counsel who is cross-examining, so that that portion of the truth which

is not evolved by the very skill with which the science of the cross-examiner is exercised, remains to be elicited on re-examination.

Now it will be, I think, admitted that, without an entire revolution in our whole system of criminal jurisprudence, and, it may be even said, a complete change in the current of our national thought, the Legislature never could be got to sanction the application of cross-examination in the sense in which at least it is applicable in the case of ordinary witnesses to persons accused of crime. If it were possible that it ever could do so, the result would involve a ten-fold greater calamity and injustice than anything produced by the present state of the law of evidence; because then an accused would cease to be tried for the crime of which he was charged, but would be tried upon his antecedents; he would be rendered liable to conviction not because he was shown to be guilty, but peradventure on account of some offence against social convention, or perhaps even because he entertained some unpopular or heretical opinion in religion or politics. On the other hand, to permit an accused simply to make a statement without its being subject to any test of cross-examination would be a useless concession which judges and juries would probably alike disregard. The solution would, therefore, appear to be that if the disability under which an accused is placed by our present law of evidence is to be modified, he should be liable to cross-examination, the same as any ordinary witness, upon *any statements* he makes when examined in chief; but that he should not be cross-examined *to*

credit. And to conclude that substantial justice would thus be done, it is only necessary to consider the difference between an accused person testifying on his own behalf and that of a witness in the ordinary sense.

The proper object of cross-examination to credit is to show that, either from motives of interest or from antecedent character, the evidence given by a witness should be looked at with distrust. The importance of this kind of cross-examination is obvious; the propriety of it when confined within fair limits is manifest. A witness presents himself and unfolds a narrative on the face of it plausible and believable. The side on which he is called puts him forward as a witness impartial in the facts he narrates; and unimpeachable in the character he bears. Questions are then put to the witness with the view of showing either that the appearance of impartiality is assumed, and that the witness has an interest in the result of the trial, depending either upon the gratification of some private feeling or the desire of gain; or that the antecedents of the witness are such that he is unworthy of belief. But in the case of an accused person such questions would either be unnecessary or mischievous. His testimony when given in his own favour, on the face of it would be given with a self-interested motive which it would require no cross-examination to manifest. To cross-examine him as to his antecedents would, in the case of a man having a bad or doubtful record, be to import into the case an amount of prejudice which would be certainly mischievous and unfair, and

would, as has been before observed, probably lead to a conviction, not because the accused was guilty of the particular offence charged against him, but because he had been immoral or ill-conducted, or had been suspected of being so; or upon some other ground of prejudice. The true test of the accuracy or veracity of answers given by accused persons in their examination must depend upon whether they are reasonably belief-worthy as accounting for and explaining adverse facts or appearances; and the very circumstance that the answers were those of a person having the strongest interests to serve by self-vindication would supply (and indeed the only fear is that it would more than supply) every legitimate purpose that is attained by cross-examination to credit in the case of an ordinary witness.

By whom should the cross-examination of an accused person be conducted?

It has been suggested in some quarters that this duty should devolve upon the judge at the trial. The main reason for this suggestion lies in an apprehensiveness that if counsel be permitted to cross-examine accused persons, it would lead to brow-beating a prisoner, or that a prisoner would succumb to skilful cross-examination prepared and conducted so as to entrap him.

It is hardly creditable to the members of the criminal bar of England that this apprehension should exist, and that an important reform should be resisted, or its expediency doubted, lest it should lead to abuse at their hands. And yet this fear, it must be confessed, is far from being a groundless one.

The licence of certain advocates, in the exercise of the privilege of cross-examination, has reached a point which has more than once culminated in public outcry; and it is urged, with some force, that it will be difficult to prevent the application of this licence to prisoners on their trial if their cross-examination be left to counsel for the prosecution; and that to inflict cross-examination of such a character upon a person bowed down by the weight of a perhaps unjust accusation, struggling for all that makes life worth the having, would involve in its results a calamity greater than any good that would result from a change in the present law of evidence. If this be so, it is the licence that must be checked; not a just reform that should be withheld. And whilst I confess to some doubt as to how the proposed change may work out in practice, at first, at all events, in inferior courts, I entertain none that the sense of justice and humanity of those who are appointed to the exalted office of Her Majesty's Judges will throw sufficient protection around those who are in the position of accused persons; and that, whilst endeavouring to sift and arrive at the truth, they will take right good care to enforce the distinction between the position of an accused, admitted, or called upon, to make explanations in reference to a charge made against him, and that of an ordinary witness.

But, from every point of view, I think it would be wrong to cast upon the judge presiding at a trial the duty of cross-examining the accused. It must be remembered that it is part of the province of the judge to take notes of every answer given by a

witness; and as far as possible, whilst the evidence is being given, he ought to remain a passive observer of the demeanour of the person under examination, and of the character and effect of the questions and answers; himself putting such questions only as, from an impartial view, the judge may consider necessary in order the more clearly to elicit the truth on the one side or the other. Cast upon the judge the duty of cross-examining an accused, and, in the case of one unwilling to disclose his whole knowledge, of extracting the truth, and you at once derogate from the impartiality of the judge, or, at least, incur the risk of bringing his impartiality into mistrust; and any step that serves to diminish confidence in the impartial administration of justice is of itself a serious evil. Moreover, re-examination conducted by the advocate of the accused must follow cross-examination, and its object and importance have been already referred to. It would hardly be seemly that counsel should, as it were, enter into a contest of skill with the judge by endeavouring, in re-examination, to modify or destroy the effect of answers obtained by the judge in his cross-examination of the accused.

The next question pertaining to this branch of reform is: *Should an accused be competent only to be examined—or compellable?* To render the privilege merely permissive would obviously not be to attain one of the main grounds upon which I have shown the change to be desirable. It would do little or nothing towards proving guilt with increased convenience and certainty. It is open to the further

objection that in every case in which an accused was not tendered for examination his guilt would probably be assumed, and in some cases no doubt wrongly, and thus prejudice would usurp the place of proof. Clearly then, if the alteration is to take place, every accused person must be not only competent but compellable to be examined, and to disclose his whole knowledge as to the subject matter of the charge to be tried. But this proposition carries with it the *impossibility* that such examination should be conducted *upon oath*. To compel a man to give evidence on oath where everything that is dear to him is involved, and then if he stated aught that was false to prosecute him, or render him liable to prosecution, for having, under such a terrible temptation, done so, would be so monstrous, that the proposition only requires to be stated to be at once condemned.

To compel an accused to give evidence upon oath would amount, moreover, to a direct incitement to the commission of the crime of perjury, and the object of the criminal law is to deter from crime, not to encourage or tempt its commission. Of course it may be objected that evidence given not under the sanction of an oath, and thereby marking it out for invidious distinction from the testimony given by all other witnesses, would not impress.

It is open to another objection which, desiring to state the case fairly in all its aspects, I feel bound to point out. The crime of Perjury consists of the false statement of material facts wilfully made by a witness who has taken an oath, or made a solemn

affirmation or declaration, to speak the truth. The *gravamen* of the crime is sometimes popularly supposed to consist less in the deposition of what is false than in the *violation of a religious sanction*. This is a misconception. It consists in the commission of falsehood, uttered after a solemnity designed to direct the mind to the importance of the occasion and the necessity for speaking the truth. The sanction which the law prescribes is a religious one, because it is known to appeal more strongly than any other to the conscience, and is believed to offer the best safeguard against falsehood; and in any well-regulated system of criminal law, Perjury would be a crime of equal gravity if, in lieu of an oath, some purely secular formality were substituted. I am, therefore, aware that a defendant giving evidence upon his own trial that he knows to be false, thereby intending to deceive the Court and jury, after being reminded and warned of the occasion of his evidence, and his obligation to speak the truth, would be, in fact, guilty of an offence, critically considered, equal to what the law defines and declares to be perjury: similar and equal in other words, in all respects, to, in fact, the offence of one whom the law now allows to make a solemn affirmation or declaration in lieu of an oath, and who, having made it, deposes to that which is false—a condition of things which, by the present criminal law of England, amounts to the crime of perjury, and is punishable as such in the same way as though the evidence had been given, in the usual way, upon oath.

This consequence, however, is the result of special

statutory enactment. If it be conceded that an accused person ought to be both competent and compellable to be examined upon his trial; and if it be further conceded that it would be wrong that such examination should be upon oath, then I maintain that the course prescribed by this Code affords the only reasonable alternative. It is a compromise, I admit; but in considering and legislating upon a question of this character it must always be borne in mind that human sagacity can devise no course that will be absolutely free from objection; and that ultimately that must prevail which is shown to be attendant with the greatest balance of practical advantage and convenience, and which presents the *minimum* of disadvantage.

In the case of a person admitting his guilt, or admitting circumstances which assist in proving it, the admission would not be the less acted upon because it is not given upon oath. Being an admission hostile to the person making it, it would be presumed to be true. Where the statements made by an accused under examination are of a contrary character, they must be considered by the light of the whole evidence and surroundings, and they would not the less require to be so considered if given on oath. On the other hand, the case in which an accused person would confess to having committed a crime simply because he was compulsorily sworn to speak the truth, is too rare and hypothetical to be taken into account in the solution of a practical question.

Such are the processes of reasoning upon which

I have acted in determining as to whether, and subject to what limitations or otherwise, an alteration in the existing law of evidence, which prohibits an accused being examined on his own behalf, or his subjection to any questions on his trial which would prove his guilt or establish his innocence, as the case may be, is desirable; and on a question of this importance, and where so much difference of opinion naturally exists, I have thought it desirable to state them at great, although I hope not at excessive, length.*

To sum up, then, the amendments in the present law of evidence which this Code would propose to affect, it may be stated that it provides that: Every accused person may be examined in the preliminary inquiry before a magistrate, and also upon his trial, either by the prosecution, or in his own behalf or that of any person jointly accused with him; that such examination be *not* upon oath; that where any accused person shall be examined by the prosecution, he shall have the right to add any explanation or addition he may desire, or may be examined by or on behalf of any co-defendant; or when either is represented professionally, that he may be re-examined by their respective advocates: that when an accused person is examined on his own behalf, or on behalf of any co-defendant, he may be cross-

* Two most able and interesting articles on this subject have appeared recently in the *Nineteenth Century* from the pens respectively of Sir James Stephen, Q.C., and Mr. Alfred Wills, Q.C.

The change in the law here advocated has, moreover, been affirmed, *in principle*, in the House of Commons by a considerable majority upon the second reading of a Bill brought in by the Hon. Evelyn Ashley.

In the details of Mr. Ashley's measure, it will be seen, I do not concur.

examined by the prosecution upon the evidence he has given; but not as to his credit. And, further, that the husband or wife of any accused person shall no longer be under any disability as a witness in a criminal trial, but shall be an equally competent witness in all respects with any other person.

Another reform proposed, and which I have worked out in my draft Code, is the substitution of a simple Act of Accusation in place of the highly technical and otherwise objectionable system of Indictment. Upon this point I venture to believe that, whatever the divergence of opinion as to other suggested reforms, few will be found to uphold the present system of criminal pleading. When an accused has been committed to take his trial, it cannot be necessary that yards of parchment should be employed to state the formal nature of the accusation against him. The present cumbrous system enjoys the distinction of being alike unintelligible to nearly every person concerned. It is unquestionably so to a prisoner; whilst juries are repeatedly told by judges that the language of an indictment would only serve to confuse them; and judges themselves have a bare abstract of the indictment prepared for their own use in order to avoid the useless labour of going through a mass of verbiage.

A few illustrations may not be considered misplaced in order that the present system may be compared with the Act of Accusation which is proposed in substitution.

To take a simple case: A. is committed to take his trial on a charge of obtaining from B. by false

pretences certain goods on different days in the same month. An indictment has then to be prepared, not stating the charge thus plainly and intelligibly, but containing a number of what are called *counts*, each of which occupies probably twenty lines of engrossment on parchment; each count being an absolutely identical reproduction of the other except only an alteration in the day of the month and of the description of goods obtained. Nor is this all, for each of these counts which have thus to be reproduced is in itself a model of verbosity. Thus every count commences with a useless formula in which the grand jurors are made, *upon their oaths*, to present that the accused has been guilty of the offence upon which he is afterwards to be tried and perchance acquitted; whilst each and every count concludes with a declaration that the act done is "*to the evil example of others, and against the peace of our Sovereign Lady the Queen, her Crown and Dignity!*" In the case of certain crimes, the formula is varied by the jurors presenting that the accused committed the crime, "*not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil,*" language assuredly hardly consonant with the dignity of a modern Court of Justice. The jurors then between the first-mentioned formulæ are made to present that A. being evilly disposed and contriving and intending to defraud and injure B., did falsely pretend certain things, each one of which must be separately and singly set out with the utmost precision and particularity, and then *each separate representation* must be traversed thus, "*whereas in truth and in*

fact," such and such a statement (setting it out fully) *was not true*; "*and whereas in truth and in fact*," such another statement (also set out in full), *was not true*, and so on until every separate statement has been exhausted. And every word must be repeated in every count, be they never so many. This is a simple case.

In offences not of an every-day character the indictment is often unusually complex and voluminous. Thus an indictment against workmen for conspiracy arising out of a trade dispute will extend to a hundred folios in length and may contain fifty or more separate *counts*; each, however, charging substantially the same offence, but laid in different ways and forms. This prolixity is rendered imperative, or is invited, by the artificial rules of pleading now in force. It may be asked how it is possible to inspire confidence in the administration of the criminal law when the very statement of the accusation is involved in, what to those principally concerned must seem, almost hopeless confusion.

Another objection to the present system of indictments is that the language used is often deliberately misleading. Thus every indictment for murder charges that the accused, "*of malice aforethought*," did kill and murder, whereas in a large number of cases which are in law wilful murder, there is either no intention to kill at all, or certainly no killing with malice aforethought in the ordinary sense in which those words are understood in popular language. No more forcible instance of this can be given than

the case already referred to* of our law declaring that a man shooting at the poultry of another in a farmyard with intent to steal it, and accidentally killing a person he did not see, is guilty of wilful murder, and liable to be hanged, under the legal fiction of "*implied malice*."

Now nothing can be easier than to state the nature of the offence for which a man is to be placed upon his trial in language which shall be at once short, simple, and intelligible to every understanding. It may be urged that no great principle is involved in this, and that it is merely a matter of detail. Even if this were true, it would be sufficient to reply that in framing a Code of Criminal Procedure, simplicity of form should always be kept in view. But it must be borne in mind that, although the same frivolous objections which formerly rendered almost the omission to cross a "*t*" or to dot an "*i*" fatal to an indictment are not now allowed to prevail, an indictment is even to this hour a highly technical instrument, affording loopholes of escape to a criminal, quite irrespective of the real merits of the prosecution. For the present Indictment this Code would substitute an Act of Accusation, which, to take the first case which has served as an illustration of the present system, that of A. obtaining goods by false pretences from B. on different days in the same month, would in a single paragraph in narrative form state that on the following days (*specifying them*) A. did obtain from B. certain goods (*describing them*) by means of false pretences, namely (*setting out the*

* *Supra*, p. xvii.

representations charged as false) with intent to defraud, contrary to the Penal Code ; and which, in the case of every offence, would state it in language of similar simplicity.

In the instance given we have every fact described with perfectly sufficient minuteness, bringing home clearly to the mind of the accused, and all those engaged in the trial, what is the offence charged, and the facts giving rise to the accusation.

Ample powers are given to direct any necessary amendment of the Act of Accusation ; as well as to order particulars to be furnished to an accused where the statements in the Act of Accusation are not given with proper certainty or particularity ; but care is taken to provide that mere variances or omissions, having no bearing upon the merits, and by which an accused has not been in fact misled or prejudiced, shall not result in a failure of justice.

Another reform in procedure deserves mention. In civil litigation, each side has the right to have produced *before* the trial for inspection, and to be furnished with copies of, every writing relating to the matters in issue in the possession of the other, the production of which is not privileged. No such right exists in criminal cases. Letters or other documentary evidence may be suddenly adduced at the trial of which an accused or his advisers have had no previous intimation ; or, worse still, documentary evidence which would tend to exculpate the accused may be kept back altogether. I have refrained, hitherto, in these pages from founding any argument upon facts derived only from my personal

experience, or referring to cases save such as are authoritatively recorded. But a case so peculiarly illustrative of the hardship of depriving persons placed on their trial for Crime of the privilege of obtaining discovery and inspection of any writings relating to the charge came under my notice, that I do not hesitate to adduce it.

The secretary of a joint-stock company was put upon his trial charged with the misappropriation of moneys, the property of the company. His defence was that he had made certain payments for the company for the purpose of influencing business; but that in accordance with the wishes of the directors, these payments, being of an exceptional character, were not to be, and had not, in fact, been, entered in the company's books of account. The witnesses called for the prosecution denied all knowledge of any such payments, or instructions. The jury were in the act of considering their verdict, and, there being no evidence of the truth of the explanation given by the defendant, nothing beyond his mere assertion made through his counsel, the defendant was in imminent danger of being convicted. The prosecution had been served with notice to produce the company's minute-book, and this had been produced by an officer of the company, who, however, denied that it contained any entry which bore out the defence. The minutes extended over some years, and it was not an easy matter, during the progress of the trial, to look through all the entries, and otherwise to watch the case. Whilst, however, the jury were deliberating, I came upon an

entry bearing out the defendant's statement. The witness by whom the minute-book had been produced was recalled; he was confronted with the exculpatory minute; and the defendant was at once, I will not say merely acquitted, but, in all probability, rescued from conviction.

If, as in civil cases, there had been the power to obtain a judge's order to inspect the books of the company before the trial, it would have been impossible that any such danger should have been incurred by an innocent man. In criminal trials for alleged commercial frauds, and in other cases, where the evidence is largely of a documentary character, it is a palpable hardship that an accused should be denied the right of access to books and papers indispensable to the preparation of his defence. It is almost superfluous to point out that an amendment of the law upon this subject would be favourable also to the side of a prosecution; and, from every point of view, is required in the interests of justice; and the necessary powers to order discovery and inspection, similar so far as is practicable, having regard to the points of difference between civil and criminal procedure, to those given to civil litigants, will be found contained in this Code.

So also as to Admissions. In civil litigation, either side may, and in the case of merely formal evidence can be required to, admit any facts bearing upon the litigation. This may be effected either by written admissions between the parties before the trial or verbal admissions made by the parties or their counsel whilst the trial is in

progress. But in criminal cases, whilst an accused may admit himself, by his plea, guilty of the whole offence charged against him; if he plead "*not guilty*" he is not, nor is counsel on his behalf, permitted to admit any single fact necessary to the legal proof of the offence; but the same must be strictly proved notwithstanding that it is not really in dispute. Thus, in a recent case the whole of the cashiers at a branch of one of the principal London banks were required to leave their posts, at great public inconvenience, and to be in attendance for several days, to prove that they gave certain bank notes in payment of particular cheques, facts which were not disputed, and which the defendant and his counsel were willing, and the latter, in fact, offered to admit; but they were met by the rejoinder that "*nothing can be admitted in a criminal case.*" In the person of skilled and scientific witnesses a similar waste of time frequently occurs. The evidence they have given in the preliminary inquiry, or a certificate or report would often be admitted without their personal attendance, but, as the law now stands, this cannot be done. This Code proposes a remedy for this inconvenience, which, whilst it will, on the one hand, economize the time of all those engaged in the administration of criminal justice, sufficiently safeguards the interests of accused persons by preventing admissions which could prejudice them on their trial.

Various amendments in the procedure of magistrates' courts are introduced; as also provisions extending the jurisdiction of magistrates, and, *inter*

alia, empowering them to deal summarily with offenders who plead guilty to the crime charged against them; but whom they are, by the present law, compelled to commit for trial, notwithstanding such admission of guilt, thereby creating an amount of expense and public inconvenience for which there is no real justification.

E. D. L.

52, OLD BROAD STREET, E.C.,
May 8, 1878.

ADDENDA.

THIS work was commenced some two years since, when, to all outward appearances, there was no prospect of the task being otherwise undertaken.

At the opening of the last session of Parliament, however, a bill for the codification of the law in respect of indictable offences was mentioned in the Queen's Speech as one of the measures included in the Government programme. This preface had been written some time previously, and I had made considerable progress with the draft Code.

Notwithstanding the announcement that the Government had at length taken this important matter in hand, and that the draft bill to be presented to Parliament had been entrusted to no less accomplished a lawyer than Sir James Stephen, I did not feel at liberty to relinquish a work which was then far advanced towards completion. Prior to the introduction of the Criminal Code Bill by the Attorney-General, the preface to this work was, at the suggestion of professional friends, printed and privately circulated.

In September following, I acceded to a requisition made to me that I should read a paper on "The Codification of the Criminal Law of England" before deputies of the Trades Union Congress then assembled at Bristol. This paper was subsequently published by request,* and in it I pointed out what I conceived to be some of the shortcomings and imperfections of the Government bill. Briefly stated, they amount in substance to this, that :

- (a) The Criminal Code Bill deals with the matter in a fragmentary manner ; and does not fulfil the primary condition of embracing the whole subject of which it professes to treat.
- (b) It is a Digest rather than a Code : more than the one, but certainly less than the other.
- (c) The Lord Chancellor, speaking of the measure in the House of Lords, used these words : "It will repeal the whole of the present statute law in relation to indictable offences. It also expresses and sets out the whole of the common law on the same subject ; so that, if the measure should pass into law, it would constitute of itself a complete Code, in that the principal portion of the criminal law of this country." Whereas, so far from the Government bill fulfilling these indispensable conditions of a Code, it not only leaves a great portion of the common law as applicable to offences

* "A Paper on the Codification of the Criminal Law of England."
C. Kegan Paul & Co.

unrepealed ; but it does not even, as represented, repeal the whole of the statute law upon the subject.

- (d) Definitions are frequently at fault ; simplicity of structure and language disregarded ; technical injustices preserved ; vindictive punishments retained ; property protected in the old feudal spirit ; humanity neglected ; the privilege of free and public meeting and discussion invaded ; the power of arbitrary arrest left uncurbed ; even the right to bail curtailed.

The bill has been referred to a commission composed of three judges and the author of the measure exclusively ; a course at which considerable dissatisfaction has been expressed, and which will do little or nothing to render its progress through Parliament facile.

I at least claim for my own work this, that it is the outcome of an extensive and varied actual *practical* experience of the subjects of which it treats ; that, whilst it is exclusively the emanation of a single mind, and therefore, of necessity, peculiarly open to criticism, I have been careful to follow and to preserve everything that is good in our own existing laws ; to be in harmony with the progress of modern thought ; and jealously solicitous of popular rights and liberties which a Criminal Code presents abundant opportunities of invading, dealing as it does not only, as is sometimes commonly

supposed, with crimes and criminals, but with the rights of free discussion, public meeting, combination for the redress of grievances, and other of the most precious and valued privileges of Englishmen.

E. D. L.

February, 1879.

CONTENTS.



PART I.

PRELIMINARY.

CLAUSE	PAGE
1. Short title	3
2. Time for coming into operation of Code	3
3. Construction of terms	3
4. Application of Code	6
5. Berwick-on-Tweed part of England	6

CHAPTER I.

REPEAL OF THE COMMON AND STATUTE LAW RELATING TO INDICTABLE OFFENCES, AND SUBSTITUTION OF THIS CODE.

6. Offenders to be tried under this Code	7
Saving as to offences committed prior to this Code coming into force	8
7. Saving as to summary jurisdiction of magistrates and justices, and also in relation to acts done prior to the enacting of this Code	8
8. Saving of the privileges of the High Court of Parliament and Court of Lord High Steward. Privilege of Peers of Parliament	9
9. This Code not to affect provisions of Mutiny Acts	9
10. Application of rules of law enacted by this Code	10

CHAPTER II.

CONSTITUTION OF THE SUPREME COURT OF CRIMINAL JUDICATURE.

11. Establishment of a Supreme Court of Criminal Judicature, consisting of Her Majesty's High Court of Criminal Justice and Her Majesty's Court of Criminal Appeal	11
12. Constitution of Court of Criminal Appeal	11
13. Appointment of additional Judges	12

CLAUSE	PAGE
14. Constitution of High Court of Criminal Justice. Appointment of three Judges, to be styled Judges of Her Majesty's High Court of Criminal Justice	12
15. From whom Judges to be selected	12
16. Salary of Judges of High Court of Criminal Justice	12
17. Salary of Judges of Court of Criminal Appeal	12
18. Pension of Judges of High Court of Criminal Justice	13
19. Office of Judge of High Court of Criminal Justice, how vacated	13
20. Courts to be deemed duly constituted notwithstanding any temporary vacancy	13
21. Tenure of office of Judges	13
22. Precedence of Judges of Court of Criminal Appeal	14
23. Computation of service entitling to pension	14
24. Pension of additional Judges of Court of Criminal Appeal	14
25. Pension to Judges permanently disabled	14
26. Salaries and pensions of Judges charged on Consolidated Fund	15
27. Rank and precedence of Judges of High Court of Criminal Justice	15

CHAPTER III.

(I.)—JURISDICTION OF THE HIGH COURT OF CRIMINAL JUSTICE.

28. Jurisdiction of High Court	16
29. Transfer of jurisdiction of existing Courts	17
30. Jurisdiction hereby conferred may be exercised in Court or Chambers	17

(II.)—JURISDICTION OF THE COURT OF CRIMINAL APPEAL.

31. Jurisdiction of Court of Criminal Appeal	18
32. Repeal of sections 47 and 71 of the Supreme Court of Judicature Act, 1873	18
33. Directions incident to any appeal may be given by a single Judge; but Court may vary them	18
34. Composition of Court of Criminal Appeal when sitting as such	19
35. Court of Criminal Appeal may sit in two divisions	19
36. Appeal to the House of Lords when Court of Criminal Appeal not unanimous	19
37. The like by leave of Court of Criminal Appeal	19
33. Appeals to the House of Lords, how to be brought	19
39. Setting down same for hearing	20
40. House of Lords may either pronounce judgment or remit case back for judgment	20

CHAPTER IV.

OFFICERS AND OFFICES.

CLAUSE	PAGE
41. Officers attached to Supreme Court of Criminal Judicature .	21
42. Officers of Courts whose jurisdiction is transferred to be attached to Supreme Court	21
43. Rank, salary, and pension of officers	22
44. Status of certain officers to be determined by Rules of Court	22
45. Distribution of business other than that to be performed by the Judges	23
46. Unnecessary offices may be abolished upon vacancy	23
47. Treasury to provide Chambers	23
48. Appointment and salary of body clerks	24
49. Appointment, qualification, and salary of Chamber clerks .	24
50. Allowance of travelling expenses	25
51. Salaries, etc., of officers and clerks to be paid out of moneys to be provided by Parliament	25
52. Solicitors of Supreme Court of Judicature in England to be solicitors of Supreme Court of Criminal Judicature .	25
53. Compensation to persons whose salary is diminished by this Code	26
54. Status of officers transferred to be determined by Rules of Court	27
55. Appointment, etc., of official shorthand writers and sworn interpreters	27
56. Duties to be performed by them respectively	28

CHAPTER V.

RULES OF COURT.

57. Rules of Court may be made for carrying this Code into effect	29
58. Rules of Court may be altered and new Rules made	30
59. Rules of Court to be laid before Parliament	30
60. Rules of Court to regulate all matters to which they extend .	31
61. Rules may provide for deposit in Court of property	31
62. Rules of Court may be annulled on an address from either House	31
63. Clauses 57-62 to come into operation on this Code receiving the Royal assent	32

CHAPTER VI.

SITTINGS AND DISTRIBUTION OF BUSINESS.

64. Exercise of jurisdiction transferred. Pending proceedings, not to be affected	33
65. Courts may sit and act at any time or place	34
66. Mode in which jurisdiction transferred to be exercised	34

CLAUSE	PAGE
67. Sittings of Court of Criminal Appeal	34
68. Sittings of Court of Criminal Appeal during the Long Vacation	35
69. Issue of Commissions of Oyer and Terminer and Gaol Delivery for London, Middlesex, and adjoining counties	35
70. District of the Central Criminal Court	36
71. Neighbouring counties may be included within the district of the Central Criminal Court	37
72. Orders in Council to be laid before Parliament	37
73. Summoning of juries	37
74. Authority of Orders in Council	38
75. Saving as to quarter sessions	38
76. Sittings for trial of accused persons in London	39
77. Power by Order in Council to unite counties for the purpose of assizes	39
78. Authority of Order in Council. Counties united to be deemed one county	40
79. Order may be revoked or altered	41
80. Sittings for trial of accused persons elsewhere than in London	41
81. Provision for temporary absence of Judge, or vacancy in office of Judge	41
82. Judge of Court of Criminal Appeal may be included in Commissions	42
83. Issue of Commissions for trial of accused persons	42
84. Constitution of Divisional Courts	42
85. 86. Time of holding Divisional Courts	43
87. Time for holding quarter sessions may be regulated by Order in Council	43
VACATIONS.	
88. Number of vacations	44
89. Commencement and duration thereof	44
90. Sittings in vacation	44

PART II.

PROCEDURE.

CHAPTER VII.

GENERAL PROVISIONS.

91. Provisions relating to procedure to extend to all trials	47
92. Not otherwise to extend to offence committed prior to Code	47
93. No one to be excused from answering upon the ground of criminating himself. Husband or wife of accused a competent and compellable witness	47
94. Outlawry in criminal cases abolished	49

CLAUSE	PAGE
95. Place of sitting of Court exercising criminal jurisdiction .	49
96. Jurisdiction of justices for adjoining counties .	49
97. Where justices may act	50
98. In what cases the public may be excluded from preliminary inquiry	50
99. Forms in Appendix valid	51
100. Justices in petty sessions may do anything authorized to be done by a single justice	52
101. Anything required to be done by, or to be under the hand of, a single justice may be done by or be under hand of chairman of petty sessions	52
102. High Court of Criminal Justice may try all offences whatever against this Code	52
103. Offences triable by courts of quarter sessions	52
104. Jurisdiction of criminal Courts in relation to offences not committed within their area	54
105. Abolition of <i>venue</i>	55
106. Limitation of time for institution of prosecution by a private person	55
107. Civil right not affected by reason of act being an offence against this Code	55
108. Court may direct a prosecution	56
109. Abolition of criminal information	57
110. Restriction upon entry of <i>nolle prosequi</i> by the Crown	58
111. Writs of error abolished	58
112. Terms "felony" and "misdemeanour" abolished	58
113. No one to be arraigned or tried on a coroner's inquisition	59
114. Power to order a prisoner to be brought up to give evidence	60
115. No writ of <i>habeas corpus</i> necessary for such purpose	61
116. Form of oath to be taken by witnesses in criminal proceedings	61
117. Form of oath on taking affidavit	61
118. The like where more than one deponent	62
119. Affirmation in lieu of oath	62
120. Provision in case of illiterate deponent	63
121. Effect of affirmation	63
122. Provision for interpreting evidence	63
123. Provision in case of a foreigner proposing to make an affidavit	64

CHAPTER VIII.

ARREST, ETC., OF OFFENDERS, AND PROCEEDINGS IN
MAGISTRATES' COURTS.

124. Prosecution, how commenced	66
125. Apprehension without warrant of offenders committing certain offences	66

CLAUSE	PAGE
126. Arrest after escape	67
127. Arrest of certain persons loitering at night	67
128. Disposal of persons arrested without warrant	67
129. Arrest without warrant of persons who have committed or are believed to have committed certain offences	67
130. Procedure where person apprehended without warrant for offence committed elsewhere	68
131. Remitting such accused for examination in district where offence committed	69
132. Any one may lay an information	70
133. Where magistrates and justices may act	70
134. Saving as to jurisdiction of magistrates created by charter or statute	70
135. Provision for issuing a warrant or summons	71
136. Not to issue unless upon an information in writing and on oath	72
137. In what cases only warrant to issue in first instance	72
138. Procedure upon application for warrant	73
139. Service of summons	74
140. Warrant for wilful disobedience of summons	74
141. Provision for issue of a second summons	75
142. Provision for issuing a warrant in certain cases, notwith- standing time for appearing to summons has not expired	76
143. Warrants and summonses to be under the hand of magis- trate or justice	76
144. By whom warrant may be executed	76
145. Warrant may be executed in any part of the United Kingdom. No backing necessary	76
146. Disposal of person so apprehended	77
147. Execution of warrant where accused in custody	78
148. Execution in England of warrant granted in Ireland or Scotland. No backing necessary	78
149. Disposal of person arrested in England upon warrant granted in Ireland or Scotland	79
150. Execution of English warrant in the Channel Islands	79
151. Execution in England of warrant granted in Channel Islands	80
152. Form and effect of endorsement of such warrant	80
153. Power to issue a search-warrant	81
154. Search-warrant to issue only on sworn information	82
155. One entry only to be made thereunder ; but a fresh warrant may issue on a new sworn information	82
156. Execution of search-warrant	83
157. Warrant to apprehend may be issued or executed at any time	83
158. Warrant to remain in force until executed	83

CLAUSE	PAGE
159. No objection to be allowed for defect in information, warrant, or summons	84
160. Summons may be served in any part of the United Kingdom	84
161. Service of summons, how proved	84
162. Magistrate or justice may administer oath	84
163. Or take affidavit or declaration	84
164. Person apprehended on warrant to be furnished with copy thereof. Rules as to inspection of information	85
165. Privileges of accused in relation to counsel or solicitor	86
166. Provision in case of person accused of offences committed in different districts	87
167. Summons to compel attendance of witness and production of documents	88
168. Service of summons	89
169. In what case conduct money to be paid	89
170. Warrant for wilful disobedience of a summons to attend and give evidence or produce	89
171. Form and execution of warrant	90
172. Provision as to time of executing same	90
173. 174. How contumacious witness to be dealt with	91
175. Committal of witness refusing to be examined or produce, or to take oath or affirmation	93
176. Ordering witnesses out of Court	94
177. Holding of preliminary inquiry	94
178. Examination of witnesses for the prosecution	95
179. What witnesses to specify	95
180. Accused entitled to be represented by counsel or solicitor	95
181. Re-examination of witnesses for the prosecution	96
182. Provision as to reading over evidence	96
183. Witness to sign same	97
184. Provision as to evidence taken down in shorthand	97
185. Corrections, alterations, and additions made by witness upon evidence being read over	97
186. Magistrate or justice to sign statement	98
187. Definition of "deposition"	98
188. Accused competent and compellable to be examined in preliminary inquiry	99
189. By whom examination to be conducted. Protection of accused	99
190. At what period accused may be examined	100
191. What accused to be informed of at close of the examination	101
192. Examination of accused where two or more persons jointly accused	101
193. Examination of accused to be read over to and signed by him	101
194. Examination of accused to form part of the evidence in the case	102

CLAUSE	PAGE
195. Definition of "deposition of the accused"	102
196. Power to magistrate or justice to call any person as a witness	103
197. When and for what period an accused may be remanded	103
198. Bringing up accused before remand has expired	105
199. Inspection and copy of depositions pending remand	105
200. In what cases accused entitled to bail as of right	106
201. In what cases bail is discretionary	107
202. Surety not to be refused only by reason of not being a householder	107
203. Excessive bail illegal	107
204. Proposed surety not to be dissuaded or hindered	107
205. Provision where accused not at once prepared with bail	108
206. Where sureties may enter into recognizances in such case	108
207. Discharge of accused on giving bail	109
208. Right to bail not to be affected by certain omissions	110
209. Provision where sureties cannot attend before magistrate or justice fixing bail, or where accused detained	110
210. Provision for transmission of recognizances	112
211. Accused not bailed, how to be dealt with	113
212. Warrant where accused remanded in custody	113
213. Warrant against accused not surrendering to his bail. Estreat of recognizances	113
214. Form of and mode of executing warrant	114
215. Restriction on re-admission to bail of an accused who has failed to surrender	114
216. Discharge of accused where evidence insufficient to justify committal	114
217. Discharge not a bar to a subsequent inquiry	115
218. Procedure where evidence raises presumption of guilt	115
219. Rights of the accused at this stage	115
220. Taking examination of witnesses for the defence	116
221. Provision for custody of documentary evidence	116
222. Procedure where magistrate or justice decides to commit	116
223. Discharge of an accused after hearing defence	117
224. Detainer of accused committed for trial without bail	118
225. Provision where accused committed for trial in another county	118
226. Form and effect of warrant of commitment	118
227. Condition of recognizance entered into by surety for an accused	119
228. To what Court committal to take place	119
229. Provision in a case of exceptional difficulty triable at sessions	119
230. Service of summonses upon witnesses to appear at trial	119
231. Certificate of witness's expenses	120
232. Accused to be furnished with a copy of the depositions	121

CONTENTS.

lxxx

CLAUSE	PAGE
233. No objection to lie by reason that accused committed to wrong place	121
234. Summons to compel attendance of witnesses not examined in preliminary inquiry	121
235. Provision as to service of same	122
236. Payment of conduct money	123
237. Transmission of the depositions, etc.	123
238. Grant of certificate to accused unable from poverty to procure professional assistance upon his trial	124
239. Limitation as to same	125
240. Procedure in case of a witness summoned not appearing at the trial	125
241. Certificate of non-appearance <i>primâ facie</i> evidence	126
242. Witness attending trial on a summons entitled to expenses	126
243. In certain cases prosecutor may enter into recognizances to prefer an Act of Accusation	127
244. Amount and other incidents, by whom to be fixed	127
245. Notice to accused and transmission of the depositions	127
246. Accused entitled in such case to copy of the depositions and summonses to compel attendance of witnesses	129
247. Prosecutor entitled to the same on payment	129
248. Transmission of duplicate summons evidence of service	130
249. In case of acquittal of accused, prosecutor who has entered into recognizances may be ordered to pay costs	130

CHAPTER IX.

TAKING THE EXAMINATION OF PERSONS DANGEROUSLY ILL.

250. Power to take examination of persons dangerously ill	132
251. Service of notice on person against whom examination to be taken	133
252. Conduct of the examination	133
253. Duty of magistrate or justice taking same	134
254. Furnishing copy of statement taken	135

CHAPTER X.

SUMMARY JURISDICTION OF MAGISTRATES, AND JUSTICES IN PETTY SESSIONS.

255. Jurisdiction in case of persons pleading guilty to certain offences	136
256. Summary conviction, and sentence authorized to be passed	137
257. Limitation of punishment where value of property does not exceed twenty shillings	138
258. Jurisdiction in case of juvenile offenders	138

CLAUSE	PAGE
259. Procedure where person under the age of sixteen pleads guilty and desires to be dealt with summarily . . .	139
260. Prohibition against dealing summarily in certain cases . . .	140
261. Power to a single justice to remand to next petty sessions . . .	141
262. Accused entitled to assistance of counsel or solicitor . . .	142
263. Effect of summary conviction	142
264. Form of summary conviction	142
265. Conviction not to be quashed for defect of form . . .	142
266. Transmission of conviction to quarter sessions . . .	143

CHAPTER XI.

APPEALS FROM COURTS OF INFERIOR CRIMINAL JURISDICTION
TO THE HIGH COURT OF CRIMINAL JUSTICE.

267. Mandamus	144
268. Service of and obedience to same	144
269. Appeal from refusal of magistrate or justice to admit to bail	145
270. Procedure where accused entitled to bail as of right . . .	146
271. Procedure where bail discretionary	146
272. Production of original or certified copy of depositions . .	147
273. Where rule returnable	147
274. Transfer to High Court of Criminal Justice of jurisdiction conferred by 20 & 21 Vict. c. 33, so far as relates to England	147
275. Appeal to Court of Criminal Appeal	148

CHAPTER XII.

PROCEDURE AFTER COMMITTAL OF ACCUSED.

276. Power to change place, and to give directions as to mode, of trial	149
277. Conditions under which such order may be made	150
278. By whom, and how, notice of change of place of trial to be given	150
279. Transmission of depositions, etc.	150
280. What orders may be made where place of trial changed . .	150
281. Consent of accused where more than one	152
282. Provision for more speedy trial of homicide by persons subject to Mutiny Act	152
283. Abolition of inquest by grand jury	153
284. No one to be tried unless committed for trial, or prosecutor has entered into recognizance to prefer Act of Accusation . .	153
285. No one to be tried upon presentment of grand jury for any offence alleged to have been committed after the coming into force of this Code	154

CONTENTS.

lxxxiii

CLAUSE	PAGE
236. Pleadings in criminal cases to be drawn as hereby provided	154
237. By whom, and how, Act of Accusation to be drawn .	154
238. Act of Accusation to be according to forms in Appendix hereto	155
239. What Act of Accusation shall accuse of	156
290. Accused may apply to strike out any unauthorized matter	156
231. What offences may be included in the same Act of Accusation	156
292. What verdict jury may find	157
293. Accused may be tried separately upon any one or more of the offences contained in Act of Accusation	157
294. What acts amount to a separate offence	158
295. Sentence in case of accused convicted of separate offences .	158
296. Annex to Act of Accusation	159
297. Act of Accusation not to be void for defect of form or variance. Power to amend same	159
298. Postponement of trial where amendment ordered	159
299. What averments in Act of Accusation unnecessary	160
300. Written instrument, the subject matter of an Act of Accusation, need not be set out therein	169
301. Acts of Accusation to be engrossed or printed, and prosecutor or accused to be entitled to inspect and to copies .	161
302. Notice of calling further witnesses for the prosecution, not called in the preliminary inquiry	162
303. Prohibition against calling further evidence in certain cases where no notice given	162
304. Postponing trial on application of the accused	162
305. In certain cases trial may take place in an adjoining county	163
306. Definition of adjoining county	164

CHAPTER XIII.

TRIAL OF ACCUSED PERSONS.

307. Accused persons to plead	165
308. Challenge of the array	166
309. Challenge may be admitted or demurred to	167
310. In what cases new panel to be returned	167
311. If truth of challenge disputed, triers to be appointed. Procedure thereupon	168
312. Bench warrant	168
313. Estreating recognizances of accused persons failing to appear	169
314. Pleas in abatement or bar	169
315. Prosecutor may apply for particulars	170
316. Procedure upon plea of "Not guilty"	171
317. Procedure where accused called upon to plead appears to be of unsound mind	171

CLAUSE	PAGE
318. If accused so found, he may be detained during Her Majesty's pleasure	171
319. Accused to be entitled to assistance of counsel	172
320, 321. Procedure where accused stands mute. Finding of jury	172
322. Procedure where jury find that accused cannot understand proceedings by reason of mental infirmity	173
323. Accused standing mute entitled to assistance of counsel	173
324. Calling of the jury	173
325. Challenge of individual jurors	173
326. Procedure thereupon	175
327. In what cases a new panel to be returned	176
328. Court may excuse juror unfit to act from physical or mental infirmity	176
329. Mode of dealing with accused where new panel directed and trial postponed in consequence	176
330. In what cases a prosecution may be withdrawn	177
331. Plea of "Guilty" equivalent to conviction	177
332. In what cases an Act of Accusation may be quashed	177
333. Giving accused in charge to the jury	178
334. Ordering witnesses out of Court during trial	178
335. Duty of the prosecution as to evidence	179
336. Court may require the attendance and examination of a witness not called on either side	179
337. Accused competent and compellable to be examined	180
338. When accused may be examined by the prosecution	180
339. Provision where accused represented by counsel	181
340. Examination of accused for the defence	182
341. No oath to be administered to an accused	183
342. Saving as to a person pleading guilty, or as to whom prosecution withdrawn	183
343. Reading deposition of witness unable to attend trial or kept away	183
344. Postponement of trial from day to day	186
345. Officer in charge of jury to be sworn	186
346. Accommodation for jury when not permitted to separate	186
347. Addresses of counsel	187
348. Counsel not entitled to sum up in certain cases	187
349. Speech for the defence where no witnesses called for the accused	188
350. Speech for the defence when witnesses are called for the defence	188
351. Reply	188
352. Accused not represented entitled to address the jury on his own behalf	189
353. Counsel for the Crown not entitled to reply, save where same authorized in other cases	190

CONTENTS.

lxxxv

CLAUSE	PAGE
354. Summing up of Judge	190
355. Retirement of jury to consider verdict	190
356. Jury to be allowed fire and reasonable refreshments	191
357. What verdict jury may find	191
358. Entry of verdict of "Not guilty"	191
359. Discharge of accused on verdict of "Not guilty"	192
360. Accused acquitted on ground of insanity to be detained during Her Majesty's pleasure	192
361. Procedure where jury return a finding amounting to a verdict of "Guilty"	192
362. Verdict of jury to be delivered in open Court. Discharge of jury unable to agree	193
363. Motion in arrest of judgment	193
364. Appeal in mitigation of punishment	194
365. In what cases jury may be discharged	194
366. Reservation of questions by Court of Oyer and Terminer or Gaol Delivery	195
367. Procedure where question of law so reserved	196
368. Reservation of questions of law by courts of quarter sessions	197
369. Procedure thereupon	197
370. Appeal from Divisional Court to Court of Criminal Appeal	198
371. Assignment of counsel where question of law reserved	199
372. Sentence after verdict	199
373. Admission to bail where sentence respited	200
374. The like where person convicted ordered to come up for judgment when called upon	200
375. Such person may require the Court to pronounce sentence on him	200
376. Limitation of time for passing sentence	201
377. Previous conviction, how proved	201

CHAPTER XIV.

ADMISSIONS, INSPECTION, AND VIEWS.

378. Admissions in criminal cases	203
379. Mode of making such admissions	203
380. Form, effect, and giving in evidence of admission	204
381. Parties may be required to make admissions in certain cases	204
382. Jurisdiction of Court to order admissions to be made	205
383. Order for production of books and documents upon application of an accused	206
384. The like by an accused	206
385. Discovery by prosecutor on oath	206
386. Notice requiring production of books and documents by prosecutor	207

CLAUSE	PAGE
387. Prosecutor to appoint a time for inspection	207
388. Procedure where prosecutor omits or refuses to give inspection	208
389. Production of documents by prosecutor on trial	208
390. Persons wilfully disobeying order for discovery or inspection liable to attachment	209
391. Views	209

CHAPTER XV.

APPLICATION FOR NEW TRIAL.

392. Right to apply for a new trial	210
393. Grounds upon which application may be made	210
394. Verdict of "Not guilty" not to be disturbed	211
395. To whom application to be made in the first instance	211
396. Motion to Divisional Court for a new trial	212
397. What orders a Divisional Court may make	212
398. Appeal to Court of Criminal Appeal against refusal of a Divisional Court to grant a new trial	213
399. Court granting a new trial may impose terms	213
400. New trial not to be granted except with consent of person convicted	213
401. Court granting a new trial may give directions as to same	214
402. Procedure on new trial	214
403. By whom application for a new trial may be made	214
404. Applications for a new trial to be heard and determined in open Court	214
405. Limitation of time for applying for a new trial	215
406. Arrest of execution	215
407. Power to Court to order payment of costs of an accused where a new trial granted	216

PART III.

OFFENCES AND PUNISHMENTS.

CHAPTER XVI.

(I.)—PRELIMINARY.

407. Application of this part of the Penal Code	221
408. Proviso to preceding clause	222
409. Restriction on proceedings against a foreigner for an offence committed on board or by means of a foreign ship	222
410. Construction of terms	223

(II.)—GENERAL PROVISIONS.

CLAUSE	PAGE
411. Intent a question of fact	226
412. Jury to determine whether accused incapable of forming the particular intent charged	226
413. Definition of "having in his custody or possession".	227
414. Offences committed by co-owners	227
415. Husband and wife	228
416. Accessories to acts committed by husband in relation to the property of his wife, or <i>vice versâ</i>	229
417. Presumption of innocence	229
418. Ignorance of law not an excuse	229
419. But relevant to question of intent with which act done	229
420. Accused acting under ignorance or mistake of fact	229
421. Rule of law as to the evidence of an accomplice	230

(III.)—PLACE OF COMMISSION OF OFFENCES.

422. Where an offence is in general committed	230
423. Where offence of conspiracy is committed	230
424. Offences resulting from unlawful bodily injury where committed	230
425. Place of commission of offences in relation to property	231
426. Offences committed on the boundary of counties	231
427. The like during a journey	232
428. Where offence is committed which consists in publishing any document, etc.	232
429. Jurisdiction over offences committed on the high seas or on land out of England	233

CHAPTER XVII.

(I.)—PUNISHMENTS.

430. Persons convicted of offences to be punished only as authorized by this Code	234
431. Offenders may be required to enter into recognizances	234
432. Punishment of death	235
433. Duration of, and mode of inflicting, penal servitude	235
434. Imprisonment of three kinds	235
435. Incidents of imprisonment as a misdemeanant	235
436. Infliction of imprisonment with or without hard labour	236
437. Restriction upon the infliction of corporal punishment	236
438. No female to be subject to corporal punishment in any case	236
439. Flogging restricted to males above sixteen years of age	236
440. Mode of inflicting flogging	236
441. Not to be inflicted where it may endanger health	237
442. Punishment of whipping	237

CLAUSE	PAGE
443. How inflicted	237
444. Limitation of time for inflicting flogging or whipping .	237
445. Flogging or whipping may be cumulative upon other punishment	238
446. Fine when authorized	238
447. Payment of fines by instalments	238
448. Excessive fines unlawful	238
449. Abolition of imprisonment for inability to pay a fine .	239
450. Mode of enforcing payment of fines	239
451. Power to send juvenile offenders to a reformatory school .	240
452. Court may refrain from passing any sentence in the case of a trivial offence	240
453. Discretion as to infliction of punishment	240

(II.)—CUMULATIVE SENTENCES.

454. Sentences may be cumulative. Limitation as to sentence of imprisonment	241
455. Punishment of person convicted of offences for each of which he is liable to two years' imprisonment	241
456. Punishment of person convicted of offences punishable with penal servitude and imprisonment, respectively .	242

(III.)—SENTENCE AFTER PREVIOUS CONVICTION.

457. Sentence for offence punishable with five years' penal servitude after previous conviction for certain offences .	242
458. The like if offence punishable by seven years' penal servitude	242
459. The like where offence punishable by fourteen years' penal servitude	243
460. The like where offence punishable by penal servitude for a term exceeding fourteen years	243
461. When seven years' penal servitude, minimum sentence .	243
462. Procedure on conviction of offence after previous conviction	244

(IV.)—POLICE SUPERVISION.

463. Power to order a person, previously convicted of certain offences, to be subject to police supervision	244
---	-----

CHAPTER XVIII.

(I.)—PERSONS DEEMED INCAPABLE OF, OR IRRESPONSIBLE FOR, CRIME.

464. Who are incapable of crime	246
465. Abolition of doctrine of marital coercion	247

(II.)—MATTERS OF JUSTIFICATION OR EXCUSE.

466. Execution of acts authorized by law	247
--	-----

CLAUSE	PAGE
467. Execution of lawful sentences	247
468. Offence committed under compulsion	248
469. When the use of force is justified	248
470. Obedience to orders of a superior not a justification in certain cases	249
471. On whom duty lies of proving incapacity or justification	250

(III.)—PARTIES TO THE COMMISSION OF OFFENCES.

472. Who are parties to an offence	250
473. Who are parties to an attempt to commit an offence	251
474. What constitutes an attempt to commit an offence	251
475. Punishment of an attempt to commit an offence	252
476. Incitements and offenders acting in common accord	253
477. Accessories after the fact	253
478. Limitation of punishment of accessories after the fact. Proviso in case of husband and wife	254
479. Agreement entered into or security given for restoration of property	255

(IV.)—CONSPIRACY TO COMMIT OFFENCES.

480. Definition of conspiracy	255
481. Punishment of conspiracy	255

CHAPTER XIX.

OFFENCES.

TREASON.

482. Definition and punishment of treason	256
483. Limitation of time for instituting prosecution for treason. Rule of Evidence	260
484. Treason punishable only as enacted by this Code	261
485. Accessory after the fact to treason	261

ASSAULTS ON THE SOVEREIGN.

486. Definition and punishment	262
--	-----

PUBLIC CONTEMPTS AGAINST THE SOVEREIGN.

487. Definition and punishment	264
--	-----

RIOT.

488. Definition and punishment	265
489. Rioters continuing assembled together after reading of the proclamation of the "Riot Act"	266
490. Limitation of time for instituting prosecution	268
491. Riotously demolishing buildings, etc.	268
492. Riotously injuring buildings, etc.	269

ILLEGAL DRILLING AND TRAINING.	
CLAUSE	PAGE
493. Definition and punishment	269
494. Limitation of time for instituting prosecution	270
SEDUCING SOLDIERS FROM THEIR ALLEGIANCE, OR INCITING TO MUTINY.	
495. Definition and punishment	270
UNLAWFUL OATHS.	
496. Definition and punishment	271
SEDITION.	
497. Definition and punishment	271
498. Proprietor of periodical, when not criminally responsible for sedition published therein	273
499. Protection to persons innocently selling a seditious publica- tion	273
PIRACY.	
500. Definition and punishment	273
501. Aiding pirates	276
502. Not fighting pirates	277
SLAVE TRADING.	
503. Definition and punishment	277
504. Seamen knowingly serving on board slave-ship	279
505. Forfeiture of ships, etc., used in slave trade	280
MURDER.	
506. Definition and punishment of wilful murder	280
507. When jury may find a verdict of manslaughter	282
508. Court to pronounce sentence of death	283
509. Respite of woman who is pregnant	283
MANSLAUGHTER.	
510. Definition and punishment	283
INFANTICIDE.	
511. Definition and punishment	284
SUICIDE.	
512. Definition and punishment of acts relating to suicide	285
513. Attempt to commit suicide	285
ATTEMPTS, CONSPIRACIES, AND LETTERS THREATENING TO MURDER.	
514. Punishment of an attempt to murder	285
515. Inciting and conspiracy to murder	286

CONTENTS.

cxi

CLAUSE	PAGE
516. Accessory after the fact to murder, and sending letter threatening to murder	286
517. Preventing escape from wreck	287
PROCURING ABORTION.	
518. Definition and punishment	288
519. Attempts to procure abortion	288
CONCEALMENT OF BIRTH.	
520. Definition and punishment	288
RAPE AND KINDRED OFFENCES.	
521. Definition and punishment of rape	289
522. Attempt to commit rape	290
523. Carnally knowing a child between the ages of twelve and thirteen	290
524. Attempt to carnally know children under thirteen, and indecently assaulting females	291
525. Procuring a female under the age of twenty-one to have carnal connection	291
526. Definition of carnal knowledge	291
527. Punishment of conspiracy to defile	292
BIGAMY.	
528. Definition and punishment. Proviso	292
529. Knowingly going through form of marriage with a person bound by a subsisting marriage	294
ABDUCTION OF FEMALES.	
530. Taking away or detaining a female against her will	294
531. Abduction of a girl under sixteen	294
532. Abduction of an unmarried woman between the age of sixteen and twenty-one years	295
533. Provision as to property of any woman who is abducted	295
UNNATURAL OFFENCES.	
534. Definition and punishment	296
535. Attempt to commit	297
536. Assault with intent to commit	297
BODILY HARM.	
537. Causing grievous bodily harm	297
538. Attempts to cause grievous bodily harm	297
OFFENCES COMMITTED, OR ATTEMPTED TO BE COMMITTED, WITH VIOLENCE TO THE PERSON.	
539. Definition and punishment of offences with violence	299
540. Administering poison so as to endanger life or inflict grievous bodily harm	299

CLAUSE	PAGE
541. Causing actual bodily harm, and administering poison with intent to injure or annoy	300
542. Endangering the safety of railway passengers	300
543. Wantonly endangering the safety of railway passengers, and causing bodily harm by furious driving, etc.	301
544. Injuring or attempting to injure persons by explosive or corrosive substances	301
545. Placing explosive substances near buildings, etc.	302
SETTING MAN-TRAPS.	
546. Definition and punishment	302
SELF-MAIMING.	
547. Definition and punishment	303
ACTS AND OMISSIONS ENDANGERING LIFE, HEALTH, OR PROPERTY.	
548. Wilful omission to provide necessaries. Exposing or endangering the life or health of any person by certain acts or omissions	303
549. Causing injury to property	306
CHALLENGES AND FIGHTING.	
550. Challenging or provoking to fight	306
551. Unlawful fighting	306
ASSAULTS.	
552. Definition and punishment	306
553. Assault with intent to commit certain offences	307
ASSAULTS WITH INTENT TO ENDANGER HEALTH, ETC., OR TO OBSTRUCT CRIMINAL JUSTICE.	
554. Definition and punishment	308
ASSAULTS UPON MINISTERS OF RELIGION.	
555. Definition and punishment	309
OFFENCES RELATING TO DEAD HUMAN BODIES.	
556. Definition and punishment	310
PUBLIC INDECENCY.	
557. Definition and punishment	310
OBSCENE PUBLICATIONS.	
558. Definition and punishment	311
PUBLIC INSULTS TO RELIGION.	
559. Definition and punishment	312
FORCIBLE ENTRY AND DETAINER OF LAND OR HOUSES.	
560. Definition and punishment	313

ARSON.		
CLAUSE		PAGE
561. Definition and punishment		313
562. Attempt to commit arson		315
MALICIOUS INJURIES TO PROPERTY BY GUNPOWDER.		
563. Blowing up buildings, etc.		315
564. Attempt to blow up buildings, etc.		315
565. Manufacturing or knowingly having gunpowder, etc., with an unlawful intent		316
566. Letter threatening to burn or destroy		317
MALICIOUS INJURIES TO SHIPS.		
567. Scuttling ships		317
568. Attempt to scuttle ships		317
569. Exhibiting false signals, etc.		318
570. Destroying part of a ship in distress or stranded		318
571. Damaging ships by other means. Injuring, concealing, or destroying buoys, etc.		318
MALICIOUS INJURIES TO LIGHTHOUSES, SEA AND RIVER BANKS, BRIDGES, ETC.		
572. Destroying or injuring lighthouses, sea-banks, quays, locks, bridges, etc.		319
573. Removing piles, etc.; injuring or obstructing navigable rivers; and injuries to salmon rivers, mill-ponds, etc.		321
MALICIOUS INJURIES TO RAILWAYS AND TELEGRAPHS.		
574. Injuries to railway trains		322
575. Injuries to telegraphs		323
MALICIOUS INJURIES TO MINES.		
576. Definition and punishment		323
MALICIOUS INJURIES TO MACHINERY AND GOODS IN PROCESS OF MANUFACTURE.		
577. Definition and punishment		325
MALICIOUS INJURIES TO PROPERTY IN PLACES OF PUBLIC RESORT.		
578. Damaging works of art, public monuments, trees, etc., in public parks and gardens		326
MALICIOUS INJURIES TO TOLL-BARS.		
579. Definition and punishment		327
MALICIOUS INJURIES TO TREES, ETC., IN PRIVATE PARKS.		
580. Definition and punishment		328
MALICIOUS INJURIES NOT OTHERWISE PROVIDED FOR.		
581. Definition and punishment		329

RULE OF EVIDENCE APPLICABLE TO MALICIOUS INJURIES TO PROPERTY.		PAGE
CLAUSE		
582. Proof of intent to injure or prejudice any particular person unnecessary. Definition of expression "wilfully"		330
BURGLARY AND HOUSEBREAKING.		
583. Definition and punishment of burglary		331
584. Definition and punishment of housebreaking		332
585. Housebreaking with intent to commit an offence therein		332
586. Entering a dwelling-house at night with intent to commit an offence therein		332
587. Definition of expression "breaks"		333
588. Definition of expression "enters"		334
ROBBERY.		
589. Definition and punishment of robbery		334
ROBBERY WITH VIOLENCE.		
590. Definition and punishment		336
591. Punishment of assaults and threats with intent to rob		337
592. Persons armed or disguised to commit offences, or in possession of housebreaking instruments		337
STOPPING A MAIL.		
593. Definition and punishment		339
CHILD STEALING.		
594. Definition and punishment		339
PERJURY.		
595. Definition and punishment. Subornation of perjury		340
596. Defect in constitution of Court immaterial		342
597. Perjury committed otherwise than in a judicial proceeding		342
598. Rule of evidence		343
CONSPIRACY TO BRING A FALSE ACCUSATION.		
599. Conspiracy to bring a false accusation of offence against this Code		344
600. The like of offence punishable on summary conviction		344
CONSPIRACY TO DEFEAT OR PERVERT JUSTICE.		
601. Conspiracy to pervert or obstruct the due course of justice		344
602. Conspiracy to prevent the lawful execution of criminal process. Attempt to pervert justice, etc.		345
603. Corruption of jurors		345
FORGERY.		
604. Definitions of forgery. Uttering a forged document		346

CONTENTS.

XCV

CLAUSE	PAGE
605. Forgery may be committed notwithstanding the false document is incomplete	349
606. Rule of evidence as to intent to defraud	349
607. Forgery punishable with penal servitude for life	349
608. Forgery punishable with twenty years' penal servitude	354
609. Forgery punishable with penal servitude for fourteen years	354
610. Forgery punishable with penal servitude for seven years	355
611. Forgery punishable with penal servitude for five years	356
612. Offences preparatory to forgery	357
613. Using probate, etc., obtained by forgery or perjury	359
614. False entries in books relating to public funds	360
615. Fraudulently making out false dividend warrants	360
616. Forging attestation to power of attorney, etc., to transfer stock	360
OFFENCES RELATING TO STAMPS.	
617. Definition and punishment	362
618. Rule of evidence in case of licensed dealers	364
OFFENCES IN RELATION TO TRADE-MARKS.	
619. Definition of "trade-mark" and "customary mark"	364
620. Definition and punishment of offences against trade and customary marks. Forfeiture	365
OFFENCES IN RELATION TO HALL-MARKS.	
621. Forging hall-marks	367
FRAUDULENT PERSONATION OF OWNERS OF PROPERTY.	
622. Definition and punishment	368
623. Fraudulently acknowledging recognizance, etc.	370
OFFENCES AGAINST PUBLIC COIN.	
624. Definition of "current coin"	370
625. Definition of "false or counterfeit coin"	371
626. Definition and punishment of offences	371
627. Fraudulently impairing current coin	373
628. Exporting counterfeit coin. Unlawful possession of filings, etc.	373
629. Unlawful possession of counterfeit current coin with intent to utter	374
630. Uttering counterfeit coin, and possessing same with intent to utter. Defacing current coin of the realm	375
631. When offence relating to coin is complete	376
632. Rule of evidence	376
THEFT.	
633. Definition of theft	376
634. Fraudulently destroying a valuable security	379

CLAUSE	PAGE
635. Punishment of theft	380
636. Value of property where damage done in order to commit theft	383
CRIMINALLY RECEIVING PROPERTY OR TAKING REWARDS.	
637. Receiving with a guilty knowledge	383
638. Unlawfully taking reward for helping any person to recover property criminally obtained	384
UNLAWFUL POSSESSION OF PROPERTY.	
639. Definition and punishment	385
FRAUDULENT PLEDGING.	
640. Definition and punishment	385
OBTAINING EXECUTION, ETC., OF VALUABLE SECURITIES.	
641. Definition and punishment	387
FRAUDS BY OFFICERS, ETC., OF PUBLIC COMPANIES.	
642. Frauds by directors, etc., of bodies corporate or public; and by promoters	387
FALSIFICATION OF ACCOUNTS BY CLERKS OR SERVANTS.	
643. Definition and punishment	390
CONSPIRACY TO DEFRAUD.	
644. Definition and punishment	391
CHEATING.	
645. Definition and punishment of different acts of cheating	391
FRAUDULENT CONCEALMENT AND FALSIFICATION OF TITLE.	
646. Frauds against the Transfer of Land and Declaration of Title Acts. Concealment of title or falsification of pedigree	392
647. Saving as to civil rights	394
648. Construction of terms	395
FRAUDULENT DEBTORS.	
649. Fraudulent acts by persons adjudicated bankrupt, or whose affairs are liquidated by arrangement. Fraudulent acts by a debtor after the presentation against him of a bankruptcy petition or the commencement of his liquidation, or within four months thereof	396
650. Making a false claim, etc. upon a debtor's estate	400
651. Debtor quitting, etc., England and fraudulently dealing with property divisible amongst his creditors	400
652. Obtaining credit by fraud. Fraudulent assignment or removal of property	401

BREAKING PRISON, AND ESCAPE FROM LAWFUL CUSTODY.

CLAUSE	PAGE
653. Breaking prison to set at liberty himself or any person lawfully confined or detained therein upon accusation or conviction of any offence punishable with death or penal servitude. Permitting escape of any such person from lawful custody. Rescuing or attempting to rescue any such person from lawful custody	401
654. The like in the case of persons confined or detained upon accusation or conviction of any criminal offence punishable otherwise than with death or penal servitude	402
655. Punishment of transports or persons sentenced to penal servitude, being at large	403
656. Escaping, or assisting persons to escape, from lawful custody. Limitation of punishment	403
657. Permitting escape by negligent performance of any legal duty	405
658. Assisting prisoners of war to escape	405

LIBEL.

659. Definition of a defamatory libel, and punishment for publishing the same. What constitutes a justification or defence for the publication of a libel	406
660. Proprietor of a periodical publication not criminally liable for defamatory matter published therein without his knowledge or authority	409
661. What constitutes authority	409
662. Protection to persons innocently selling books and other publications containing defamatory libel	409
663. Giving in evidence other libels upon trial	410

SPECIAL OFFENCES BY OR IN RELATION TO PUBLIC OFFICERS.

664. Definition and punishment of judicial corruption	410
665. Public officers giving false certificates, or certifying as true any false copy or entry	411
666. Corruption of officers other than judicial. Oppression by persons in authority. Fraud or breach of trust affecting the public. Wilful neglect of persons entrusted with public duties	412
667. Corrupt acts in relation to public offices. Disabilities attending conviction for same	414

SPECIAL OFFENCES IN RELATION TO LETTERS, ETC., SENT THROUGH THE POST-OFFICE.

668. Illegally opening or detaining post letters, cards, or packets. Disclosing or intercepting contents of a telegraphic message	416
---	-----

CLAUSE	PAGE
669. Definition of terms "post letter, card, or packet," and "telegraphic message"	416
ACTS AND BREACHES OF DUTY TENDING TO PUBLIC DANGER.	
670. Acts tending to the spread of contagious disorders. Mixing injurious ingredients with food. Selling or exposing for sale food injurious to health	417
671. Breaches of duty tending to public danger	418
UNLAWFUL COERCION.	
672. Definition and punishment of	419
RIOTOUSLY PREVENTING THE SAILING, ETC., OF A SHIP.	
673. Definition and punishment	421
BREACHES OF DUTY BY SHIPOWNERS, MASTERS, AND SEAMEN.	
674. Sending unseaworthy ships to sea	421
675. Forcing seamen on shore. Discharging or leaving behind seamen abroad without lawful authority. Acts tending to the loss of or danger to a ship, or to endanger the life or safety of persons on board. Breach of duty after a collision	423
ASSEMBLING TOGETHER IN AID OF SMUGGLING.	
676. Persons assembled together, armed, for the purpose of smuggling or aiding therein	426
677. Assaulting, resisting, or obstructing officers of the army, navy, customs, or excise	427
678. Assembling, or procuring persons to assemble, together in aid of smuggling	427
INTERFERENCE IN FOREIGN HOSTILITIES.	
679. Definition of expression "friendly State"	428
680. Enlistment in service of a foreign State. Quitting the sovereign's dominions with a view to serve a foreign State. Taking illegally enlisted persons on board ship. Illegal shipbuilding. Proviso. Embarking persons under false representations as to service. Aiding the warlike equipment of foreign ships. Fitting out naval or military expeditions	428
681. Presumption as to evidence in case of building or delivery of ships in certain cases	432
682. Forfeiture of ships and their equipment in respect of which offence committed. Jurisdiction in relation to same	433
683. Detention of ship having on board illegally enlisted persons	434
684. Dealing with illegally enlisted persons	434

FRAUDULENT ACTS IN RELATION TO ELECTIONS.

CLAUSE	PAGE
685. Offences in relation to nomination forms, ballot papers and boxes at elections	434
686. Wilfully neglecting or delaying the transmission or delivery of writ for the election of a member to serve in Parliament.	435

BRIBERY, UNDUE INFLUENCE, AND PERSONATION AT ELECTIONS.

687. Definition and punishment of bribery at elections	436
688. Definition and punishment of undue influence at elections	438
689. Definition and punishment of personation at elections	439
690. Limitation of time for instituting a prosecution for offences in relation to an election	440
691. Construction of clauses limiting the time within which a prosecution may be instituted	440

GENERAL OBSERVATIONS AS TO OFFENCES NOT INCLUDED IN DRAFT CODE.

Remarks of the Criminal Law Commissioners as to leaving unrepealed obsolete statutes	442
Barratry; maintenance; champerty; suing in the name of a fictitious plaintiff; compounding a penal action; practising as a solicitor after conviction for barratry; incorrigible rogues and vagabonds; acts indictable when committed after a previous conviction for the same offence; common nuisances; pretending to exercise witchcraft; game laws; spreading false news concerning the great men of the realm; apostasy; heresy; laws against Jesuits coming into or remaining in England; clergymen refusing to use, or preaching or speaking in derogation of, the Book of Common Prayer; refusal to serve an office; disobedience to a statute; laws relating to persons receiving, etc., lunatics; <i>præmunire</i>	442

CHAPTER XX.

POWER TO COURT, UPON CONVICTION, TO ORDER RESTITUTION OF PROPERTY AND COMPENSATION FOR INJURIES.

692. Order for restoration of property of which any person has been deprived. Saving as to negotiable securities and property entrusted to agents. Persons convicted may be ordered to pay compensation for damage or injury done. Court may order payment of compensation by person convicted of injury to the person. Such orders may be in addition to or substitution of other punishment	451
---	-----

CLAUSE	PAGE
693. Certificate to be granted upon order being satisfied, and to be a bar to any other claim.	453

CHAPTER XXI.

Costs.

694. Orders for costs in criminal trials	455
695. Amount payable, by whom and how ascertained	455
696. Upon whom order for costs to be made	457
697. Costs where place of trial changed	459
698. Order for payment of costs by accused generally. Money found on prisoner may be applied towards costs. Prosecutor entitled to costs where accused fails on plea of justification	459
699. Order for payment of costs by prosecutor. Accused entitled to costs upon acquittal of charge of libel	460
700. Mode of enforcing order for payment of costs	461
701. Disabilities upon conviction of an offence followed by a sentence of death, penal servitude, or imprisonment with hard labour	461

PART IV.

JURY.

CHAPTER XXII.

QUALIFICATION, SUMMONING, AND REMUNERATION OF JURORS.

702. Definition of special jury	465
703. Definition of common jury	465
704. Definition of mixed jury	465
705. Remuneration of jurors	465
706. Number of jurors in criminal trials	466
707. Special jury to consist of special jurors only	466
708. Jury to be sworn or make solemn affirmation	466
709. Verdict must be unanimous	466
710. Judges to issue precepts to sheriff	466
711. Duty of sheriffs to apply for precepts	467
712. Obedience to precept	467
713. Mode of summoning jurors at courts of quarter sessions	467
714. Power to fine jurors for non-attendance	467
715. Mode of enforcing fines	467
716. Time within which fines to be levied	468
717. Notice to juror of fine	469

CLAUSE	PAGE
718. Remission of fines	469
719. Juror not to be liable to fine for non-attendance, unless summons served six clear days beforehand	469
720. Duty of sheriff as to preparation and transmission of panels. Copy panels to be publicly exhibited	470
721. Duty of officer of the Court in relation to preparation of chief penals where jurors summoned from different counties. Publication of same	470
722. Copy panel to be annexed to every Act of Accusation	471
723. Delivery by sheriff of jurors' names for ballot	471
724. Provision as to balloting for jurors	472
725. Same jury may try several Acts of Accusation in succession. Viewers to be first called	472
726. Limitation as to service as a juror	472
727. Provision for trial before a special or mixed jury	472
728. Provision in a case involving scientific evidence of exceptional difficulty	473

PART V.

PROTECTION OF PERSONS ACTING UNDER THIS CODE.

CHAPTER XXIII.

PROTECTION OF PERSONS ACTING UNDER THIS CODE.

729. Provision in relation to prosecutions for acts done under the authority of this Code, or under a reasonable belief that same so authorized	477
730. Limitation of time for commencement of prosecution	477
731. Conditions requisite to maintain an action for anything done under the authority of this Code	477
732. When notice of action required to be given	478
733. In what Courts actions to be commenced, and limitation of time for bringing same	479
734. Defendant may plead that act complained of was done, or claimed to be done, under the provisions of this Code	479
735. Court or Judge may stay proceedings in action brought where prohibited	479
736. Notice of special defence	480
737. Tender of amends	481
738. Pleading tender as a defence	482
739. Provision where money paid into Court in respect of part only of cause of action	483

CLAUSE	PAGE
740. Provision as to payment out of money paid into Court .	483
741. Procedure where plaintiff elects to receive money paid into Court under a defence of tender in satisfaction .	483
742. Provision as to costs in that case .	484
743. Money paid into Court may be applied towards costs ordered to be paid to defendant by plaintiff .	484
744. Mode of enforcing payment of costs .	484
745. Procedure where plaintiff elects to accept a sum paid into Court as amends in satisfaction .	484
746. Power to transfer action commenced in a County Court for trial in the High Court of Justice .	485
747. Order for inspection and copy of any warrant, charge-sheet, information, or deposition .	485

PART VI.

REPEAL OF STATUTES.

CHAPTER XXIV.

STATUTES REPEALED.

748. Extent of repeal. Proviso. Repeal not to affect anything done before the coming into force of this Code .	489
749. Rule for the construction of expressions "crime," "felony," "misdemeanour," "indictable offence," and "indictment," whenever contained in any statute in force and not hereby repealed .	505

APPENDIX.

FORM

A. Form of warrant where accused is directed to be taken before a magistrate or justice within whose jurisdiction offence committed .	509
B. Form of warrant to apprehend in the first instance .	510
BB. Form of summons to accused .	510
C. Form of information .	511
D. Form of summons for service on prosecutor or witness deposing to an information .	512
E. Form of warrant to apprehend an accused who has wilfully failed to appear to a summons .	512
F. Form of second summons .	513
G. Form of warrant issued after the granting of a summons, but prior to the time for appearing thereto .	514

FORM	PAGE
H. Form of endorsement upon a warrant	515
I. Form of search-warrant	515
J. Form of information prior to issuing a search-warrant	516
K. Form of endorsement authorizing the execution of a search-warrant on any day and at any hour	516
L. Form of affidavit (or solemn declaration) of personal service of summons	517
LL. Ditto	517
Form of exhibit to L and LL	518
M. Form of certificate under clause 164	519
MM. Ditto	519
N. Form of summons to compel attendance of witness or production of documents, etc., upon preliminary inquiry	520
O. Form of warrant in case of wilful disobedience of a summons by a witness	520
P. Form of certificate of acceptance of bail, to be endorsed on warrant of commitment	521
PP. Form of certificate of acceptance of bail, when not endorsed on warrant of commitment	521
P PP. Form of certificate where magistrate or justice accepts bail after having remanded or committed an accused for trial	522
Q. Form of warrant where accused remanded in custody	523
R. Form of warrant to apprehend an accused failing to appear upon remanded examination, having been admitted to bail	524
S. Form of warrant of commitment of accused, pending trial	524
SS. Form of warrant of commitment for trial in county not within jurisdiction of committing magistrate or justice	525
T. Form of summons upon witness to attend upon the trial of an accused	526
U. Form of certificate of expenses of witness attending before magistrate or justice, to be endorsed on summons	527
TT. Form of summons to compel attendance on trial of any person not examined at the preliminary inquiry	527
V. Form of certificate authorized to be given to an accused who is unable, by reason of poverty, to retain solicitor or counsel upon his trial. Form of endorsement upon same. Form of receipt upon payment of amount mentioned in same	528
W. Declaration by prosecutor of his intention to prefer an Act of Accusation	529
WW. Form of recognizances to be entered into by prosecutor who has declared his intention of preferring an Act of Accusation	530
X. Form of notice to accused that he is required to attend and plead to an Act of Accusation to be preferred against him	531

FORM	PAGE
Y. Form of summary conviction by magistrate or justices in petty sessions	531
YY. Ditto	533
Z. Form of certificate of Secretary of State for War, that it would contribute to the maintenance of good order and military discipline if accused (being a person subject to the Mutiny Act, charged with murder or manslaughter) were to be tried at the Central Criminal Court	534
AA 1. Form of Act of Accusation	535
AA 2—AA 17. Forms of stating offence or offences in Act of Accusation	535
W W. Forms of heading to annex of Act of Accusation	541
CC. Form of challenge to the array of jurors	543
DD. Form of demurrer to challenge of array	543
BW. Form of bench warrant	544
MQ. Statement of objection to Act of Accusation	545
CQ. Form of certificate of reversal of conviction by Divisional Court or Court of Criminal Appeal	545
CR. Form of case to be stated for the opinion of the High Court of Criminal Justice	546
AM. Form of admission	547
AO. Form of order directing admissions to be made by prosecutor or accused	549
OP. Form of order to produce accused upon the hearing of an application to a Judge to direct him to make admissions on trial	550
AD. Form of affidavit of discovery by prosecutor	550
NP. Form of notice by accused requiring prosecutor to produce documents, etc., for inspection	552
NNP. Form of notice by prosecutor appointing a time and place for inspection	552
VC. Form of certificate for costs of accused upon Court directing a new trial	553
INDEX	557

PART I.

A DRAFT
CODE OF CRIMINAL LAW
AND
PROCEDURE.

WHEREAS it is expedient to constitute a Supreme Court of Criminal Judicature, and to make provision for the better administration of criminal justice in England :

PART I.

And whereas it is also expedient that the criminal law and procedure should be codified :

Be it enacted, etc. :

PRELIMINARY.

1. This Act may be cited for all purposes as the “Code of Criminal Law and Procedure.”

Short title.

2. This Act, except any provision thereof which is declared to take effect on the passing hereof, shall commence and come into operation on

Date when
Code to
come into
operation.

3. In the construction of this Act, unless there is anything in the subject or context repugnant thereto,

Construc-
tion.

PART I. the several words hereinafter mentioned shall have and include the meanings following, that is to say :—
Of Terms. The expression “Penal Code,” or “this Code,” respectively means and signifies the Code of Criminal Law and Procedure by this Act authorized and enacted. Anything the commission or omission of which is made punishable by this Code shall be deemed to be an “offence against the Penal Code.”

The expressions “Her Majesty’s High Court of Justice,” or “the High Court of Justice,” and “Her Majesty’s Court of Appeal,” or “the Court of Appeal,” mean respectively “Her Majesty’s High Court of Justice,” and “Court of Appeal,” as defined by “the Supreme Court of Judicature Acts, 1873–1875.”

Her Majesty. The expression “Her Majesty” shall include her heirs and successors.

Term “Lord Chancellor” includes Lords Commissioners for executing office of Lord High Chancellor. The term “Lord Chancellor,” whenever used in this Code, shall, when the Great Seal is in commission, mean and include the Lords Commissioners for executing the office of Lord Chancellor: save that as to the appointment or approval of officers, or the sanction to any order for the removal of any officer; the sanction to Rules of Court to be made hereunder; or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Code may be exercised by the Senior Lord Commissioner for the time being.

Treasury. The expression “the Treasury” means the Commissioners of Her Majesty’s Treasury for the time being, or any two of them.

Rules of Court. The term “Rules” includes forms and schedules.

The expression "Quarter Sessions" includes any PART I.
 quarter or general sessions of the peace holden in Quarter
 or for any county or district, as hereinafter defined, Sessions.
 and all adjournments thereof.

The term "Magistrate" means any one of the Magis-
 magistrates appointed to act for any of the police trate.
 courts of the metropolis, or any stipendiary magis-
 trate appointed for any city, town, liberty, borough,
 or district.

The term "Justice" means any justice of the Justice.
 peace appointed to act as such in any county, city,
 town, borough, liberty, or district in England or
 Wales under any charter, statute, or commission of
 the peace.

The expression "Magistrate or Justice" includes Magis-
 petty sessions or justices in petty sessions assembled. trate or
justice.

"Prosecutor" means and includes not only any Prose-
 person aggrieved by an offence, but any person upon cutor.
 whom is cast by law the duty of prosecuting, or
 who is directed or required by any magistrate or
 justice to prosecute, or who has voluntarily or other-
 wise taken upon himself the duty of prosecuting or
 putting the law in force against an offender or
 alleged offender.

The term "County" shall be construed to include County.
 riding, parts, liberty, and division of a county.

The term "Place" or "District" shall be con- Place and
 strued to include any city, town, county of a city or district.
 town, borough, or other district or place having a
 separate jurisdiction.

The term "Oath" includes solemn affirmation or Oath.
 declaration.

In describing or referring to any person or party, Words

PART I.

importing
the singular
number
to include
the plural;
and words
importing
the masculine
gender to
include
females.

"Person"
includes
in certain
cases corporate
or aggregate
bodies or
societies.

This Act
to apply to
England
and Wales
only.

Berwick-
on-Tweed
part of
England.

matter or thing, any word importing the singular number shall be understood to include several persons and parties as well as one person and party, and several matters and things as well as one matter and thing; and words importing the masculine gender only shall be understood to include females also.

The word "Person," or other like expression, whenever used in this Code to denote the party against whom an offence may be committed, shall be deemed to include all corporate or aggregate bodies or societies capable of possessing property.

4. Nothing in this Act contained shall extend or apply to any part of the United Kingdom other than England and Wales, save and except the contrary is expressly enacted and declared in this Code.

5. The town of Berwick-upon-Tweed shall be deemed to be in England for all purposes of this Code.

CHAPTER I.

REPEAL OF THE COMMON AND STATUTE LAW IN
RELATION TO CRIMES AND OFFENCES, AND SUBSTITUTION OF THE PENAL CODE.

6. FROM and after the coming into force of this Code, no person shall be deemed guilty of, or be apprehended, tried, proceeded against, or punished, nor shall any person be liable to any penalty, order, forfeiture, or disability for or by reason of, any act or default whatsoever committed or alleged to have been committed after this Code comes into operation, and for or in respect of which, if such act or default had been committed before the coming into force of this Code, such person would have been liable to be proceeded against by indictment or information, either at common law or by virtue of any statute; except such act or default is expressly declared to be an offence under the provisions of this Code; in which case the person committing the same shall be proceeded against and dealt with under the provisions of this Code, and not otherwise; and no punishment or penalty shall be adjudged or awarded, nor shall any order be made, or forfeiture or disability be incurred, in respect of any such act or default, except in manner hereby expressly provided,

PART I.

No person to be here-
after tried
or pun-
ished for
any
offence,
whether at
common
law or by
virtue
of any
statute,
except
under the
provisions
of this
Code.

PART I.

Saving as
to offences
committed
prior to
this Code
coming
into force.

any law, statute, usage, or prescription to the contrary notwithstanding: * provided that, except where it is otherwise expressly enacted by this Code, nothing herein contained shall be deemed to apply to or affect the apprehension, prosecution, committal, trial, conviction, punishment, or otherwise of any person guilty of, or accessory to, any crime or offence committed, either wholly or in part, prior to the date of this Code coming into force, or any law or statute in force in relation thereto; but, save as aforesaid, any such person shall be liable to be apprehended, prosecuted, committed, tried, convicted, and punished, or otherwise dealt with; and any jurisdiction or power that may be lawfully exercised, or any right or privilege that may be lawfully claimed, prior to this Code coming into force, may be exercised, enforced, or claimed in respect of or in relation to any such crime or offence, or any trial therefor, in all respects as though this Act had not been passed.

This Code
not to
affect
jurisdic-
tion of
magis-
trates or
justices in
relation to
acts done
prior
thereto,
or over
which
they have
summary
jurisdic-
tion.

7. Except and where it is otherwise expressly enacted by this Code, nothing herein contained shall apply to or affect the jurisdiction, powers, or procedure of any magistrate or justice of the peace in relation to any act or default committed or suffered by any person, either wholly or in part, prior to this Code coming into force, or in relation to any act, matter, or default in respect of which any magistrate or justice of the peace has summary jurisdiction; but, save as aforesaid, the jurisdiction, powers, and

* The effect of this would be, practically, to repeal the whole of the common law and statute law, so far as they relate to the definition or punishment of indictable crimes and offences; and to substitute the provisions and enactments of the "Penal Code."

procedure shall, in respect of or in relation to any such act, matter, or default, be the same, and any person committing, or suffering, or being accessory to any such act or default may be proceeded against and dealt with in all respects, and any conviction or order that may be lawfully made prior to this Act coming into force in respect of or in relation to any such act or default may be made and carried out in all respects, as though this Act had not been passed. PART I.

8. Nothing in this Code contained shall be deemed in any way to interfere with or derogate from the powers, rights, and privileges, or affect the proceedings of the High Court of Parliament; or the Court of the Lord High Steward of Great Britain, as at present by law and custom established. Every Peer of Parliament shall be entitled to the same privilege, in respect of any offence against this Code upon conviction of which the person convicted is liable to be sentenced to death, penal servitude, or imprisonment with hard labour, as before this Code coming into force he was entitled to in respect to treason or felony. Or any privilege of the High Court of Parliament; or Court of Lord High Steward. Privilege of Peers of Parliament.

9. Nothing in this Code contained shall be deemed in any way to affect any enactment contained in any Act for the regulation and discipline of Her Majesty's forces, or the punishment of mutiny and desertion, now or at any time hereafter in force under the authority of Parliament; or any power, authority, or jurisdiction conferred by any such Act in reference to the trial, sentence, punishment, or otherwise of any person liable to be tried, sentenced, or punished thereunder. Or the provisions of any Mutiny Act now or hereinafter in force.

PART I.

Rules of
law by
this Code
enacted to
apply to
all Courts
exercising
criminal
jurisdic-
tion.

10. The several rules of law enacted and declared by this Code shall be in force and receive effect in all Courts whatsoever in England and Wales exercising any criminal jurisdiction, so far as the matters to which such rules relate shall be respectively cognizable by such Courts.

CHAPTER II.

CONSTITUTION OF THE SUPREME COURT OF CRIMINAL
JUDICATURE.*

11. FROM and after the day of 18 PART I.
there shall be constituted a Supreme Court of Establish-
Criminal Judicature. The said Supreme Court ment of a
shall consist of two permanent divisions, one of Supreme
which, under the name of Her Majesty's High Court Court of
of Criminal Justice, shall have and exercise original Criminal
criminal jurisdiction, with such appellate jurisdiction Judica-
from the decisions of courts of quarter sessions, and ture.
magistrates and justices of the peace acting in petty
sessions, as is hereinafter enacted; and the other of
which, under the name of "Her Majesty's Court of
Criminal Appeal," shall have and exercise appellate
jurisdiction, as hereinafter mentioned.

12. Her Majesty's Court of Criminal Appeal shall Constitution
be constituted as follows: It shall consist of the of
following Judges, who shall be Judges thereof by Court of
virtue of, and so long only as they continue to hold, Criminal
their several offices, viz.: the Lord Chief Justice of Appeal.
England, the Master of the Rolls, the Lord Chief
Justice of the Common Pleas, the Lord Chief Baron

* *Vide* Preface, pp. xxi.-xxv.

PART I. of the Exchequer, and the Lords Justices of Appeal, and their successors appointed to fill their respective offices, whether under the same or any altered title.

Her Majesty may appoint three additional Judges of Court of Criminal Appeal.

13. It shall be lawful for Her Majesty (if she shall think fit) to appoint, under her Royal Sign Manual, any other Judge of the High Court of Justice, or any other person who has been a Judge of the High Court of Justice or of the High Court of Criminal Justice, to be an additional Judge of the Court of Criminal Appeal, under the style of Lord Justice of Criminal Appeal: provided that the additional Judges so appointed shall not at any one time exceed three in number.

Constitution of High Court of Criminal Justice.

14. Her Majesty's High Court of Criminal Justice shall be constituted as follows: Of three Judges, to be appointed by Her Majesty under Letters Patent, to be styled Judges of Her Majesty's High Court of Criminal Justice.

From whom Judges to be selected.

15. The Judges of the High Court of Criminal Justice shall be selected from amongst the following persons, viz. :

1. The Judges present or future of Her Majesty's Court of Appeal or High Court of Justice.
2. Such persons as are now by law qualified to be appointed Judges of Her Majesty's High Court of Justice.

Salary of Judges of High Court.

16. The salary to be paid to each Judge of the High Court of Criminal Justice shall be 6000*l.* a year.

Salary of

17. Every *ex-officio* Judge of the Court of Criminal

Appeal, except the Lords Justices of Appeal, and every additional Judge appointed by Her Majesty under the provisions of this Code shall receive a salary of 1000*l.* a year by virtue of such appointment, independently of any salary or pension enjoyed by or granted to him in respect of any other office.

PART I.

Judges of
Court of
Criminal
Appeal.

18. Every Judge of the High Court of Criminal Justice who has served for twenty years as a Judge thereof shall be entitled to a pension by way of annuity, to be continued during his life, equal to two-thirds of the salary of his office as Judge of the said Court.

Pension
of Judges
of High
Court.

19. The office of any Judge of the High Court of Criminal Justice may be vacated by resignation, in writing under his hand, addressed to the Lord Chancellor without any deed of surrender, and the office of any Judge of the said High Court shall be vacated by his accepting the appointment of a Judge of the Court of Criminal Appeal.

Office of
Judge of
High
Court, how
vacated.

20. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge of either of such Courts.

Courts
deemed
duly con-
stituted
notwith-
standing
any tem-
porary
vacancy.

21. All the Judges of the High Court of Criminal Justice and the additional Judges of the Court of Criminal Appeal, respectively, shall hold their offices as such Judges, respectively, during good behaviour, subject to a power of removal by Her Majesty on an address presented to her by both Houses of Parliament. Every person appointed after the enacting

Tenure of
office of
Judge of
High
Court, or
additional
Judge of
Court of
Criminal
Appeal.

PART I. of this Code to be a Judge under the provisions hereof, when he enters upon the execution of his office, shall take the usual judicial oath and the oath of allegiance.

Precedence of Judges of Court of Criminal Appeal. 22. The Lord Chief Justice of England shall be President of the Court of Criminal Appeal. The other *ex-officio* Judges of the Court of Criminal Appeal shall rank in the order of their present respective official precedence. The additional Judges, if not otherwise entitled to precedence, shall rank with ordinary Judges of the Court of Appeal according to the priority of their respective appointments as such additional Judges.

Service of Judge of High Court of Justice to be reckoned in computing time entitling to pension. 23. In the case of any Judge of the High Court of Justice who shall be appointed a Judge of the High Court of Criminal Justice, service as a Judge of the former Court shall for the purpose of determining the length of service entitling such Judge to a pension, as hereby provided, be deemed service in the High Court of Criminal Justice.

Pension of additional Judges of Court of Criminal Appeal. 24. Every additional Judge of the Court of Criminal Appeal appointed by Her Majesty under the provisions of this Code shall, after ten years' service as such Judge, be entitled to a pension by way of annuity, to be continued during his life, equal to two-thirds of the salary of his office as such Judge.

Her Majesty may grant a pension to Judges permanent. 25. Her Majesty may by Letters Patent grant to any Judge of the High Court of Criminal Justice, or to any additional Judge of the Court of Criminal Appeal, who is disabled by permanent infirmity from

the performance of the duties of his office, a pension by way of annuity, to be continued during his life, not exceeding two-thirds of the salary of his said office respectively.

PART I.
nently dis-
abled.

26. The salaries, allowances, and pensions payable to the Judges of the High Court of Criminal Justice or the *ex-officio* or additional Judges of the Court of Criminal Appeal, respectively, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof; such salaries and pensions shall grow from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine and appoint.

Salaries
and pen-
sions of
Judges
charged
on Con-
solidated
Fund, and
to grow
from day
to day.

27. The Judges of the High Court of Criminal Justice shall, unless otherwise entitled to precedence, rank with the Judges of the High Court of Justice, who are not also members of the Court of Appeal, according to the priority of their respective appointments; and amongst themselves the Judges of the High Court of Criminal Justice shall rank according to the date of their respective appointments as Judges, whether of the High Court of Criminal Justice, or of Her Majesty's Court of Appeal or High Court of Justice.

Rank and
prece-
dence of
Judges of
High
Court of
Criminal
Justice.

CHAPTER III.

(I.)—JURISDICTION OF THE HIGH COURT OF CRIMINAL JUSTICE.

PART I.
Jurisdiction
of High
Court of
Criminal
Justice.

28. THE High Court of Criminal Justice shall be a Superior Court of Record, and, subject as in this Code mentioned, there shall be transferred to and vested in the said High Court of Criminal Justice (1) such original jurisdiction and powers as are conferred by this Code, and (2) the jurisdiction which, on this Code coming into force, was vested in or capable of being exercised by all or any of the Courts following, that is to say :

- (a) The Criminal or Crown Side of the Court of Queen's Bench, or Queen's Bench Division of the High Court of Justice.
- (b) The Courts created by Commissions of Oyer and Terminer and Gaol Delivery, or any or either of such Commissions.
- (c) The Superior Criminal Courts of the Counties Palatine.
- (d) The Central Criminal Court.
- (e) Any criminal jurisdiction vested in or capable of being exercised by the High Court of Admiralty.*

* By various statutes this jurisdiction has been, as it were, transferred to the Central Criminal Court and courts of oyer and terminer and gaol

29. The jurisdiction hereby transferred to the PART I.
 High Court of Criminal Justice shall, subject to any What
 express provision herein contained to the contrary, jurisdic-
 include the jurisdiction which, on this Code coming tion is
 into force, was vested in or capable of being exer- trans-
 cised by all or any one or more of the Judges of the ferred.
 said Courts respectively, sitting in Court or Cham-
 bers, or elsewhere when acting as a Judge or Judges
 in pursuance of any statute, law, or custom, and all
 powers given to any such Court or to any such
 Judge or Judges by any statute; and also all minis-
 terial powers, duties, and authorities incident to any
 and every part of the jurisdiction so transferred:
 provided that nothing herein contained shall be
 deemed to transfer to or vest in the High Court of
 Criminal Justice any jurisdiction vested in or
 capable of being exercised by the Queen's Bench
 Division of the High Court of Justice, or the Judges
 or any Judge thereof, save and except such as, on
 this Code coming into force, was vested in or capable
 of being exercised by the said Division on the
 Crown Side, or as a Court of Criminal Judicature,
 or by the Judges or any Judge of the said Division
 in relation to any matter on the Crown Side of the
 said Division.

30. Any Judge of the said High Court of Criminal Jurisdic-
 Justice may, subject to any Rules of Court made and tion may
 in force from time to time, under the provisions be exer-
 hereof, exercise in Court or in Chambers all and any cised in
Court or
Chambers.

delivery (*vide* 28 Hen. 8, c. 15; 4 & 5 Will. 4, c. 36; 7 & 8 Vict. c. 2; and 24 & 25 Vict. cc. 96-100); so that, as Mr. Serjeant Stephen observes, it "seems now to have been rendered almost or altogether unnecessary" ("Stephen's Com.," vol. iv. p. 400).

PART I. — part of the jurisdiction by this Code vested in the said High Court of Criminal Justice, in all such matters, and in all such proceedings in any matter, as, before the passing into law of this Code, might have been heard in Court or in Chambers, respectively, by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court of Criminal Justice, or as may be directed or authorized to be so heard by any Rules of Court to be hereafter from time to time made under the provisions hereof. In all such cases any Judge sitting in Court shall be deemed to constitute a Court.

Any Judge sitting in Court to be deemed to constitute a Court.

(II.)—JURISDICTION OF THE COURT OF CRIMINAL APPEAL.

Jurisdiction of Court of Criminal Appeal.

31. The Court of Criminal Appeal, by this Code established, shall be a Superior Court of Record, and there shall be transferred to and vested in such Court (a) such appellate jurisdiction and powers as are conferred by this Code; (b) all jurisdiction and powers now vested in or capable of being exercised by the "Court for the Consideration of Crown Cases Reserved;" (c) the appellate jurisdiction of Her Majesty's Court of Appeal, so far as the same relates to criminal matters.

Repeal of 36 & 37 Vict. c. 66 ss. 47 and 71.

32. Sections 47 and 71 of the Supreme Court of Judicature Act, 1873, are hereby repealed.

Directions incident to any appeal may be given by a single Judge;

33. In any cause or matter pending before the Court of Criminal Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the said Court;

but any such direction may be discharged or varied by the Court of Criminal Appeal. PART I.

34. The Court of Criminal Appeal shall, when sitting as such, be composed of not less than five Judges, of whom one at least shall be one of the Chiefs of the Common Law Division or the Master of the Rolls. but Court may vary them.
Court of Appeal, when sitting, to be composed of not less than five Judges.

35. The Court of Criminal Appeal may sit in two divisions at the same time, provided that each division of the Court shall be composed of not less than five Judges of the said Court, of whom one at least shall be one of the Chiefs of the Common Law Division or the Master of the Rolls. Court may sit in two divisions.

36. Whenever, upon the hearing of any appeal authorized by this Code to be made to the Court of Criminal Appeal, the Judges by whom such appeal shall be heard and determined shall not be unanimous in any judgment or order, an appeal may be brought to the House of Lords from any judgment or order of the said Court of Appeal. An appeal may be brought to House of Lords where Court of Criminal Appeal not unanimous.

37. An appeal may be brought to the House of Lords from any judgment or order of the Court of Criminal Appeal in any case also in which leave to appeal shall be given by the Court of Criminal Appeal. Or by leave of the Court of Criminal Appeal.

38. Every such appeal brought to the House of Lords shall be upon a case, to be stated by the Court of Criminal Appeal or by the parties. In case of difference, when the case is stated by the parties, the same may be settled by the Court of Criminal Appeal, or a Judge of the said Court. In every Appeals to the House of Lords, how to be brought.

PART I. instance the case shall be so drawn as to raise all questions necessary for the decision of the appeal by the House of Lords, and the same, together with the record and all necessary documents, shall be transmitted to the House of Lords by the Court of Criminal Appeal.

Setting
down
same for
hearing.

39. Upon any such appeal being brought, the same shall be set down for hearing within fourteen days after the decision proposed to be appealed from has been given, or such further time (if any) as may be allowed for that purpose; and every such appeal shall be conducted in all respects according to the practice of the House of Lords.

House of
Lords may
either
pronounce
judgment
which
ought to
have been
given, or
remit case
back for
judgment.

40. The judgment or order appealed from may be either affirmed, reversed, or amended; and the House of Lords may either pronounce such judgment as ought to have been given in the Court whose judgment is appealed from, or by the Court in which the trial took place; or may remit the case and the record to the Court whose judgment is appealed from, or to the Court where the trial took place, in order that such Court may pronounce the proper judgment therein.

CHAPTER IV.

OFFICERS AND OFFICES.

41. SUBJECT to the provisions in this Code contained with respect to existing officers of the Courts whose jurisdiction is hereby transferred to the Supreme Court of Criminal Judicature, there shall be attached to such Supreme Court the officers by this Code authorized, and also such other officers, assistants, clerks, messengers, and servants as the Lord Chancellor, with the concurrence of the Judges of the Court of Criminal Appeal and of the High Court of Criminal Justice, or the majority of them, and with the sanction of the Treasury, may from time to time determine.

PART I.
 Officers
 attached to
 Supreme
 Court of
 Criminal
 Judica-
 ture.

42. The Masters of the Crown Office, and all officers, clerks, or other assistants, messengers, and servants employed at the said Crown Office at the time of this Code coming into force, and all officers and assistants who, at the time of this Code coming into force, are attached to any Court whose jurisdiction is hereby transferred to the High Court of Criminal Justice or to the Court of Criminal Appeal; and, in the case of any Court exercising other than criminal jurisdiction whose criminal jurisdiction

Officers,
 etc., of
 Courts
 whose
 jurisdic-
 tion is
 trans-
 ferred, to
 be at-
 tached to
 the Su-
 preme
 Court of
 Criminal
 Judica-
 ture.

PART I. is so transferred, such officers or assistants as are exclusively attached to such Court in respect of or in relation to such criminal jurisdiction, shall, from and after the coming into force of this Code, be attached to the Supreme Court of Criminal Judicature, consisting of the said High Court of Criminal Justice and the said Court of Criminal Appeal.

Rank,
salary,
and pen-
sion of
such
officers,
etc.

43. The officers so attached shall have the same rank, and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions as if this Code had not passed, save and except only that the said officers shall be styled officers of the Supreme Court of Criminal Judicature; and any such officer who is removable by the Court to which, upon the coming into force of this Code, he is attached shall be removable by the Court to which he shall be attached under the provisions hereof, or by a majority of the Judges thereof: provided that the Lord Chancellor may, with the consent of the Treasury, increase the salary of any existing officer whose duties are substantially increased by reason of the passing into law of this Code.

Where
officer
attached
to Court
whose
jurisdic-
tion is
trans-
ferred
transacts
civil and
criminal
business,
his status,
etc., to be
deter-
mined by
Rules of
Court.

44. Whenever any officer attached to any Court whose jurisdiction is hereby transferred performs duties in relation to civil and criminal business, the question as to whether or not such officer shall be attached to the Supreme Court of Criminal Judicature, and if so, subject to what conditions as to rank, style, salary, and pension, shall be determined by Rules of Court, to be made in manner and under the authority by this Code enacted.

45. The business to be performed in the High Court of Criminal Justice and in the Court of Criminal Appeal respectively, or any Division or other Court thereof, or in the Chambers of any Judge thereof, other than that required to be performed by the Judges, shall be distributed among the several officers attached to the Supreme Court of Criminal Judicature, under the provisions of this Code, in such manner as may be from time to time directed by Rules of Court; and such officers shall perform such duties in relation to such business as may be directed by Rules of Court, subject to this qualification: that the duties required to be performed by any officer attached, at the time of this Code coming into force, to any Court whose jurisdiction is hereby transferred, and who, under the provisions hereof, is attached to the Supreme Court of Criminal Judicature, shall be the same, or duties analogous to those, which he performed previously to the passing of this Code; and, subject to the provisions of this Code and to such Rules of Court, all such officers respectively shall continue to perform the same or analogous duties, as nearly as may be, in the same manner as if this Code had not been enacted.

PART I.
Distribu-
tion of
business
other than
that to be
performed
by the
Judges.

46. Upon the occurrence of any vacancy in the office of any officer falling within the provisions of the last preceding clauses, the Lord Chancellor may, with the concurrence of the Treasury, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary or alter the designation or duties thereof.

Upon any
office be-
coming
vacant,
same
may be
abolished,
if deemed
unneces-
sary.

47. The Treasury shall, prior to the date appointed Treasury

PART I. to provide
Chambers. for the coming into force of this Code, provide, in the immediate neighbourhood of the Chambers of the Judges of the High Court of Justice, Chambers in which to transact all such business as is, under the provisions of this Code, or any Rules of Court to be made hereunder, authorized or directed to be done and performed in Chambers. All expenses incurred in connection with making such provision shall be paid out of moneys provided by Parliament.

Appoint-
ment and
salary of
body
clerks. 48. Each of the Judges of the High Court of Criminal Justice appointed under the provisions of this Code shall have a clerk, who shall be attached to his person as such Judge, and appointed and removable by him at his pleasure; and such clerk shall be entitled to receive such salary not exceeding £250 per annum as the Lord Chancellor, with the sanction of the Treasury, shall from time to time fix.

Appoint-
ment,
qualifica-
tions, and
salary of
Chamber
clerks. 49. There shall also, upon this Code coming into force, be appointed three Chamber clerks, who shall be appointed by the Lord Chancellor, with the concurrence of the Judges of the High Court of Criminal Justice, or a majority of them, and who shall be entitled to receive a salary of £400 per annum each, subject to be increased to a sum not exceeding £500 per annum, by yearly increments not exceeding £10 per annum. The qualifications of the persons to be so appointed from time to time, and the tenure of their offices, and the duties to be performed by the said clerks respectively shall be determined by the Lord Chancellor, with the concurrence of the Judges of the High Court of Criminal Justice, or a majority of them.

50. In the event of the said Chamber clerks or the said Judges' clerks, or either of them, being required to perform the duties of their offices at any time elsewhere than in London, they shall be allowed, in addition to their said salary, such sum for travelling and other expenses incurred by them in the discharge of their duties as shall be proper and reasonable, and as shall be from time to time fixed and determined by the Lord Chancellor, with the concurrence of the Treasury.

PART I.

Allowance of travelling expenses to Chamber and Judges' clerks.

51. All salaries or allowances payable to any officers, clerks, assistants, messengers, or servants under the provisions of this Code shall be paid out of moneys to be provided by Parliament for that purpose; and, so far as relates to such salaries, the same shall grow from day to day, but shall be payable to the persons entitled thereto, or to the executors or administrators of such persons, on the usual quarter days of payment, or at such other periods in every year as the Treasury may from time to time determine.

Salaries officers and clerks to be paid out of moneys to be provided by Parliament, and to grow from day to day.

52. From and after the coming into force of this Code, all persons being solicitors of the Supreme Court of Judicature in England shall be solicitors also of the Supreme Court of Criminal Judicature, and all persons hereafter admitted as solicitors of the Supreme Court of Judicature in England shall be entitled to be admitted solicitors of the Supreme Court of Criminal Judicature, upon producing a certificate of their admission and signing the roll of the said last-mentioned Court. Every such solicitor to whom this clause applies shall be deemed to be an

Solicitors of Supreme Court of Judicature in England to be solicitors of Supreme Court of Criminal Judicature, and subject to its jurisdiction.

PART I. officer of the Supreme Court of Criminal Judicature and of the High Court of Criminal Justice and the Court of Criminal Appeal, respectively, or any Division thereof. Every Judge thereof may exercise the same jurisdiction in respect of such solicitor, so far as relates exclusively to the said Courts, or the conduct of any solicitor in relation to any business therein, or in relation to any criminal business, as the High Court of Justice or the Court of Appeal are, at the time of this Code coming into force, authorized to exercise respectively in the case of solicitors admitted in the said Courts, in relation to business transacted therein respectively, or the conduct of any solicitor as an officer of either of the said Courts.

Compensation to persons whose salary or emoluments are diminished by this Code.

53. In any case in which the salary or emoluments of any person in the permanent service of the Crown, or any clerk of the peace for any county or borough, or other officer of any court of quarter sessions in criminal proceedings in England or Wales, or of any existing officer attached to any existing Court whose jurisdiction is transferred by this Code, may be seriously diminished by the operation and effect of this Code, so far as the same may affect any salary or fees payable to such persons at the time of this Code coming into force, any such person shall be entitled to prefer a claim to the Treasury for compensation therefor; and the Treasury, if it shall consider the claim to be established, shall have power to award to him, out of moneys provided by Parliament, such sum, either by way of compensation or as an addition to his salary, as it thinks just, having regard to all the circumstances of each particular case.

54. Whenever a doubt exists as to the position under this Code of any existing officer attached to any Court whose jurisdiction is hereby transferred, such doubt may be determined by Rules of Court, to be made in manner and under the authority by this Code enacted; subject to this proviso, that (except where the contrary is herein expressly enacted) no such Rules of Court shall alter the tenure of office, rank, salary, or pension (if any) of such officer, nor require him to perform any duties which are not reasonably analogous to those which he has hitherto performed.

PART I.
Status of officers transferred may, when necessary, be determined by Rules of Court.

55. There shall be attached to the High Court of Criminal Justice official shorthand writers, whose duty it shall be to take the shorthand notes of evidence when the same shall be so directed to be taken under the provisions of this Code. There shall also be attached to the High Court of Criminal Justice interpreters of foreign languages, whose duty it shall be to interpret into English the evidence of any foreign witness who is unable properly to express himself in the English tongue, and any document in any foreign language put in evidence in any trial or proceeding under the provisions hereof; and to interpret the evidence and proceedings to any accused person who is a foreigner, and unable properly to understand the same in the English language. The number, appointment, qualifications, and the remuneration, which may be either by fees or salary, or both, and the travelling or other allowance of the persons to be appointed from time to time as official shorthand writers and interpreters of foreign languages respectively, and the time

Appointment, etc., of official shorthand writers and sworn interpreters.

PART I. during which such persons shall hold the appointment, shall be made and determined, respectively, by the Lord Chancellor, with the concurrence of the Judges of the High Court of Criminal Justice, or a majority of them, and with the sanction of the Treasury.

Duties to
be per-
formed by
them.

56. Every official shorthand writer or interpreter of foreign languages shall respectively perform the duties entrusted to him in such places, whether in London or in the country, as may be from time to time directed or authorized by any order of the High Court of Criminal Justice made under the authority of this Code.

CHAPTER V.

RULES OF COURT.

57. HER MAJESTY may, at any time after the passing and before the coming into force of this Code, by Order in Council, made upon the recommendation of the Lord Chancellor and of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the Lords Justices of Appeal, and the Judges of the High Court of Criminal Justice, or of a majority of such Judges, make any Rules of Court for carrying this Code into effect, and particularly for all or any of the following matters or purposes, so far as they are not provided for and are consistent with this Act, that is to say :—

PART I.

Rules of
Court may
be made
for carry-
this Code
into effect.

- (a) For regulating the sittings of the High Court of Criminal Justice, and of the Court of Criminal Appeal, and of any Divisional or other Courts thereof respectively; and of the Judges of the said High Court sitting at Chambers.
- (b) For regulating the vacations to be observed by the High Court of Criminal Justice and the Court of Criminal Appeal, and in the offices of the said Courts respectively.

PART I.

- (c) For regulating the pleading, practice, and procedure in the High Court of Criminal Justice and Court of Criminal Appeal.
- (d) Generally for regulating any matters relating to the practice and procedure of the said Courts respectively, or to courts of quarter or petty sessions in criminal matters; or relating to the duties of the officers of either of the said Courts respectively, or the fees to be taken in any such Courts respectively; or to the costs of proceedings therein, or any allowance to be made to prosecutors, witnesses, or accused persons under any of the provisions hereof, or to any matter or proceeding under any provision of this Code.

Rules of
Court
made in
pursuance
of this
Code may
be altered
and new
Rules
made.

58. From and after the coming into force of this Code, the said Judges in the last preceding clause mentioned, or a majority thereof, of whom the Lord Chancellor and the Lord Chief Justice of England shall be two, at any meeting duly convened and held from time to time for that purpose, may alter and annul any Rules of Court for the time being in force, either wholly or in part, and shall have and exercise the same power of making Rules of Court as is by the last preceding clause vested in Her Majesty in Council, on the recommendation of the said Judges, before the commencement of this Act, and either in substitution of or addition to any Rule or Rules of Court for the time being in force.

All Rules
of Court to
be laid

59. All Rules of Court made in pursuance of the two last hereinbefore contained clauses shall be laid

before each House of Parliament within such time, and shall be subject to be annulled in such manner, as in this Code provided.

PART I.

before
both
Houses of
Parlia-
ment.

60. All Rules of Court made in pursuance of the said clauses, if made before the coming into force of this Code, shall from and after the coming into force of this Code, or if made after it comes into force, shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in manner provided by this Code; and shall, so long as the same continue in force, be of the same effect as if they were contained and enacted in this Code.

Rules of
Court to
regulate
all matters
to which
they ex-
tend.

61. Any provision relating to the delivery, transfer, payment, or deposit to or by any person, or in or out of any Court, of any money or property, or to the dealing therewith, shall, for the purposes of either of the preceding clauses, be deemed to be provisions relating to practice and procedure.

Rules of
Court may
provide
for the
delivery,
or pay-
ment, or
deposit in
Court of
any money
or pro-
perty.

62. Every Order in Council and every Rule of Court required by this Code to be laid before each of the Houses of Parliament shall be so laid within fourteen days next after the same is made, if Parliament be then sitting, or if not, within fourteen days after the commencement of the then next ensuing Session; and if an address is presented to Her Majesty by either House of Parliament within the next subsequent forty days on which the said House shall have sat, praying that any such Order or Rule may be annulled, Her Majesty may thereupon, by Order in Council, annul the same, and the Order or Rule so annulled shall thenceforth become void and of no

Time
within
which
Orders in
Council
and Rules
of Court
to be laid
before
Parlia-
ment;
same may
be an-
nulled on
address
from
either
House.

PART I. effect, but without prejudice to the validity of any
— proceedings which may in the mean time have been
taken under the same.

63. Clauses 57 to 62, both inclusive, shall come into operation immediately on this Code receiving the Royal assent.

CHAPTER VI.

SITTINGS AND DISTRIBUTION OF BUSINESS.

64. FROM and after the date appointed for the coming into force of this Code, the several jurisdictions which are hereby transferred to, and vested in, the High Court of Criminal Justice and the Court of Criminal Appeal respectively, shall cease to be exercised except by the said High Court of Justice and by the said Court of Criminal Appeal respectively, as enacted by this Code; provided that in all criminal matters or proceedings whatsoever which shall have been commenced, and in which final judgment shall not have been given, or in which any motion, writ of error, or case in the "Court for the Consideration of Crown Cases Reserved" is pending, at the time of the coming into force of this Code, save and except where the contrary is specially enacted herein, the same shall be proceeded with, heard, tried, and disposed of in all respects by the same Judges or Commissioners, and in the same manner, and judgment shall be given and sentence passed or respited, or such order shall be made, in all respects as though this Code were not in force; and, except as aforesaid, any such trial shall be proceeded with, and any

PART I.

Jurisdictions by this Code transferred to be exercised by High Court of Criminal Justice and Court of Criminal Appeal only.

But proceedings pending when this Code comes into force, not to be affected unless the contrary specially enacted herein.

PART I. such judgment, sentence, or order shall take effect and be carried out, to all intents and purposes as if the said trial had been heard, and such judgment and sentence pronounced or awarded, before the coming into force of this Code.

High Court of Criminal Justice and Court of Criminal Appeal may sit and act at any time and place.

65. Subject to any provision in this Code contained, the High Court of Criminal Justice and the Court of Criminal Appeal, and the Judges thereof respectively, shall have power to sit and act at any time and at any place for the transaction of any part of the business of the said Courts respectively, or of such Judges.

Jurisdiction transferred to be exercised as provided by this Code and by Rules of Court.

66. The jurisdiction by this Code transferred to the said High Court of Criminal Justice and the said Court of Criminal Appeal, respectively, shall be exercised (so far as regards procedure and practice) in the manner provided by this Code, or by such Rules of Court as may be made pursuant to the provisions in this Code contained; and where no special provision is contained in this Code, or in any such Rules of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction has been transferred, or by either of such Courts.

Sittings of Court of Criminal Appeal.

67. There shall be not less than five sittings in each year of the Court of Criminal Appeal, namely, one in each of the periods forming the sittings of the Supreme Court of Judicature, Michaelmas, Hilary, Easter, and Trinity, and one between the 15th day of September and the 15th day of October. Each

of the said sittings shall be of such length as the business to be disposed of shall appear reasonably to require, and the time for holding the same shall be appointed by the Judges of the Court of Criminal Appeal, or not less than seven thereof, of whom the Lord Chief Justice of England shall be one, but so that not less than fifteen days' public notice shall be given prior to the commencement of any or either of such sittings.

PART I.

68. Nothing in the Supreme Court of Judicature Acts or any other statute contained shall be deemed or taken to interfere with or prevent the holding of a sitting of the Court of Criminal Appeal during the Long Vacation; but, notwithstanding anything in either of the said Acts contained, a sitting of the said Court shall be held as enacted by this Code.

Court of
Criminal
Appeal
may sit
during
the Long
Vacation.

69. It shall be lawful for Her Majesty, by an Order in Council, from time to time to command and cause to be issued Commissions of Oyer and Terminer, either general or special, directed to the Judges of the High Court of Criminal Justice, and to such other person or persons to whom any such Commission is, under the provisions of this Code, authorized to be directed, or as to Her Majesty shall seem fit, who shall be deemed to be Her Majesty's Justices for executing such Commissions, commanding them to inquire of, hear, and determine all offences against this Code committed or alleged to have been committed within the city of London and county of Middlesex, and the counties of Essex, Kent, and Surrey, or such parts of the said three last-mentioned counties to which Her Majesty, by any such

Her
Majesty
may issue
Commis-
sions of
Oyer and
Terminer
and Gaol
Delivery
for
London,
Middlesex,
and such
parts of
Essex,
Kent, and
Surrey as
to which
Her
Majesty
shall, by
an Order
in Council,
direct such
Commis-
sions to
apply.

PART I. Order, from time to time shall direct the same to apply and extend, save and except such of them as are appointed to be tried at any quarter sessions of the peace; and also Commissions of Gaol Delivery, to deliver Her Majesty's gaol of Newgate of all prisoners therein committed for trial for any offence against this Code; and the said Judges and Justices to whom any such Commission as aforesaid is directed, or any two or more of them, shall inquire of, hear, determine, and adjudge all such offences, according to the provisions of this Code, at such times and places in the said city of London or county of Middlesex as by the said Commissions, or either of them, shall be appointed, or as the Judges of the High Court of Criminal Justice, or any two of them, shall appoint by virtue and in pursuance thereof; and the said Judges and Justices shall have power and jurisdiction to proceed on every such Commission so issued as aforesaid, and act under such Commission, until a new Commission shall be issued.

The district so established to be deemed one county, and to be known as the district of the Central Criminal Court.

70. The district situated within the limits of the jurisdiction established by the last preceding clause, or by any Order in Council made under the authority hereof, shall (save as is specially provided hereby, or by virtue of any statute now or hereafter in force, and not repealed hereby) be deemed and taken to be, for all purposes of trial, judgment, and execution, one county; and such district shall be known as and called the "District of the Central Criminal Court," and any Court held under the authority of any Commission as in the last preceding clause mentioned shall be called "the Central Criminal Court."

71. It shall be lawful for Her Majesty from time to time, by an Order in Council, to direct that, subject to any exceptions contained in such Order, any neighbouring county or part of such county mentioned in the Order shall be included within the district of the Central Criminal Court, as hereby established and defined, and that any Commission issued for the district of the Central Criminal Court shall apply and extend to such county or part of such county mentioned in such Order, and to offences committed therein, as if the same were a county or part of a county included within the said district.

PART I.
Provision
for neigh-
bouring
counties to
Central
Criminal
Court.

72. Every Order made in pursuance of clauses 69, 71, 77, and 79 respectively of this Code shall be published in the *London Gazette*; and shall be laid before both Houses of Parliament within such time, and shall be subject to be annulled in like manner, as is hereinbefore provided and enacted in the case of Rules of Court made under the authority of this Code.

Orders in
Council to
be laid
before
Parlia-
ment.

73. The sheriffs of the city of London, and of the counties of Middlesex, Essex, Kent, and Surrey respectively, and in the case of any neighbouring county or part of such county which Her Majesty shall by an Order at any time direct to be included within the district of the Central Criminal Court, the sheriff of such county, shall execute and obey all precepts and process which the said Judges and Justices shall award, issue, and direct unto them respectively; and shall summon and return, whenever so required and commanded, from the city of London and county of Middlesex, and from such parts of the

Power to
summon
juries from
London,
Middlesex,
and such
parts of
the
counties
of Essex,
Kent, and
Surrey,
and
neigh-
bouring
counties
comprised
in Order in
Council.

PART I. counties of Essex, Kent, and Surrey, or any neighbouring county or part of such county as to which Her Majesty, by an Order in Council, shall from time to time direct any Commission issued under the authority of clause 69 of this Code to apply and extend, a competent number of persons, duly qualified under the provisions of this Code, to act as special and common jurors respectively, upon the trial of any offence which is authorized to be inquired into and tried under or by virtue of any such Commission; and the jurors so returned, whether taken wholly from the city of London or the said counties, or taken indiscriminately from the said city and the said counties, shall have authority to hear, try, and determine all such offences, and all issues and all matters of fact arising out of such trials or relating thereto, notwithstanding that such persons are not inhabitants of the county or place where such offences may have been committed, or where the preliminary inquiry has been held.

Any Order in Council under the authority hereof shall be deemed valid, and of same force as if enacted herein.

Saving as to holding of quarter sessions; and also as to other Commissions

74. Any Order in Council purporting to be made under the provisions respectively of clauses 69 and 71 of this Code shall be deemed to be within the authority by such clauses respectively conferred, and shall, while in force, have effect as if the same were expressly enacted in this Code.

75. Nothing in any of the preceding clauses, or in any Commission issued under the authority thereof, shall be construed to hinder or prevent the justices of the peace for the cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Essex,

Kent, and Surrey, or any neighbouring county at any time directed to be included within the district of the Central Criminal Court, from holding their respective general or quarter sessions of the peace in their respective jurisdictions during the sitting of any Court of Oyer and Terminer and Gaol Delivery to be held hereunder; nor shall any or either of such Commissions supersede, interfere with, or affect any other Commission or Commissions to be at any time issued by Her Majesty in the said counties of Essex, Kent, and Surrey, or any neighbouring county directed to be included within the district of the Central Criminal Court, or the jurisdiction by virtue thereof, or the holding of any Court thereunder at any time.

PART I.
issued for
the
counties of
Essex,
Kent, and
Surrey,
and neigh-
bouring
counties.

76. The Judges of the High Court of Criminal Justice, or any two of them, shall hold a session for the trial of all persons accused of offences against this Code, and who have been committed for, or are otherwise awaiting, trial at the Central Criminal Court, once at least in every month (and oftener if need be). The times for holding the said sessions shall be fixed by Rules of Court to be made under the authority of this Code.

Sittings
for trial of
accused
persons in
London.

77. Her Majesty may, by an Order in Council, from time to time provide, in such manner and subject to such regulations as to Her Majesty may seem meet, for all or any of the following matters:—

Power by
an Order
in Council
to unite
counties
for the
purpose of
assizes for
the trial
of accused
persons.

- (a) For uniting any county for which it is inexpedient to hold a separate assize for the trial of accused persons, by reason of the small number of prisoners awaiting

PART I.

trial in such county or otherwise, to any neighbouring county or counties ;

(b) For the appointment of the place or places at which assizes are to be held for such united counties, with power to direct that they be held alternately at different places ;

(c) For regulating the time of holding quarter sessions of the peace, or any adjournment thereof ;

(d) For the attendance, jurisdiction, authority, and duty of sheriffs, gaolers, officers, jurors, and persons ; the use of any prison ; the removal of prisoners ; the carrying into effect of any sentence ; the alteration of any Commissions, writs, precepts, recognizances, summonses, proceedings, and documents ; the transmission of depositions, recognizances, summonses, and documents ; and the expenses of prosecutors, accused persons, and witnesses, and of maintaining and removing prisoners, and of and incident to the carrying out of any sentence, so far as may be necessary for carrying into effect any Order in Council made under the authority of this Code.

Or to make regulations as to time of holding quarter sessions.

Or for any purpose necessary to carry the Order into effect.

Order in Council to have same force as if enacted in this Code.

78. An Order in Council, purporting to be made under the provisions of the last preceding clause, shall be deemed to be within the authority by such clause conferred, and shall, while the same is in force, have effect as if the same were expressly enacted in this

Code ; and, for all the purposes of holding any such assize, the counties united by virtue of any such Order shall, subject to any express provision in such Order contained, be deemed to be one county, and any assize held in and for such united county shall be deemed to be held also in and for each of the counties united by such Order.

PART I.

Counties
united to
be deemed
one
county.

79. Her Majesty may from time to time, by Order in Council, revoke, alter, or add to any Order made under the authority of the last but one preceding clause.

Order may
be revoked
or altered.

80. The Judges of the said High Court, or one or more of the Judges thereof, shall hold a session of Oyer and Terminer and General Gaol Delivery in or for each and every county or county of a city in England and Wales, other than any county or county of a city comprised within the jurisdiction of the Central Criminal Court, in every second month, for the trial of all persons who are awaiting trial, accused of offences against this Code, and who are not appointed to be tried at quarter sessions.

Sittings
for trial of
accused
persons
elsewhere
than in
London.

81. Upon the request of the Lord Chancellor, it shall be lawful for any Judge of the Court of Criminal Appeal, who may consent to do so, to sit and act as a Judge of the High Court of Criminal Justice, or to perform any other official or ministerial acts for or on behalf of any Judge of the High Court of Criminal Justice absent from illness or any other cause, or in place of any Judge whose office has become vacant, or as an additional Judge of the High Court of Criminal Justice; and whilst so sitting or acting, any such Judge of the Court of

Provision
in case of
absence of
any Judge
of High
Court of
Criminal
Justice, or
vacancy
in office
of Judge
of said
Court.

PART I. Criminal Appeal shall have all the powers and authority of a Judge of the High Court of Criminal Justice: provided that no Judge of the Court of Criminal Appeal shall sit as a Judge of the said Court of Criminal Appeal upon the hearing of any appeal in any cause or matter in which he shall have sat or acted as a Judge of the High Court of Criminal Justice.

Her Majesty may include in any Commission any Judge of the Court of Criminal Appeal who may consent to act.

82. It shall be lawful for Her Majesty, if she shall think fit, to include in any Commission of Assize, Oyer and Terminer, or Gaol Delivery under the provisions hereof, any Judge of the Court of Criminal Appeal who, upon the request of the Lord Chancellor, may consent to act as in clause 81 mentioned; and such Judge shall, for the purposes of such Commission, have all the powers, authority, and jurisdiction of a Judge of the High Court of Criminal Justice.

Her Majesty may issue Commissions for the trial of persons within any place or district.

83. Her Majesty, by Commission of Assize, or by any other Commission, either general or special, may assign to any Judge or Judges of the High Court of Criminal Justice the duty of trying and determining, within any county or place specially fixed for that purpose by such Commission, any cause or matter depending in the said High Court, or the exercise of any criminal jurisdiction capable of being exercised under this Code; and any Commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Code.

Constitution of Divisional Court of

84. A Divisional Court of the High Court of Criminal Justice shall be constituted by not less than two of the Judges of the said Court sitting

and acting together; and, except when through pressure of business or any other cause it may not conveniently be found practicable, shall be composed of the three Judges of the said Court. The President of the said Court shall be the senior Judge present, ranking according to the order of precedence as by this Code defined.

PART I.
High
Court of
Criminal
Justice.

85. Subject to the provisions of this Code, and to any Rules from time to time made or in force under the provisions hereof, a Divisional Court shall be held at such times and places as the Judges of the High Court of Criminal Justice for the time being may from time to time determine; provided that a Divisional Court shall be held in London after each session of the Central Criminal Court, and shall sit for a reasonable time, to enable all the business to be brought before it to be disposed of.

Time of
holding of
Divisional
Courts.

86. A Divisional Court shall also be held after each session of Oyer and Terminer and Gaol Delivery holden in or for any county or county of a city, and shall sit for a reasonable time, to enable all the business to be brought before it to be disposed of.

87. Notwithstanding any statute to the contrary, general quarter sessions of the peace may be lawfully held in or for any county or place at any time which may be appointed for that purpose by any Order in Council from time to time made and in force under the authority of this Code, and the same shall be held in accordance with, and as shall be from time to time directed by, such Order.

Quarter
sessions
may be
lawfully
holden at
any time
directed
by Order
in Council
under the
authority
hereof.

PART I.

VACATIONS.

Number of
vacations.

88. The vacations to be observed in the several Courts and offices of the Court of Criminal Appeal and High Court of Criminal Justice shall be three in every year, viz. the Midsummer Vacation, the Christmas Vacation, and the Easter Vacation.

89. Subject to any Rules and Orders of Court from time to time made and in force under the provisions hereof:—

Com-
mence-
ment and
duration
of vaca-
tions.

The Midsummer Vacation shall commence on the 10th day of August, and terminate on the 7th day of September.

The Christmas Vacation shall commence on the 24th day of December, and terminate on the 1st day of January.

The Easter Vacation shall commence on Good Friday, and terminate on Easter Tuesday.

In each case the days of the commencement and termination of each vacation shall be included in such vacation.

The several Courts and offices of the Court of Criminal Appeal and the High Court of Criminal Justice shall be closed also on every Sunday throughout the year, and on Whit Monday.

Sittings in
vacation.

90. Provision shall be made by Rules of Court for the hearing during vacation, by the High Court of Criminal Justice and the Court of Criminal Appeal respectively, or by any Judge thereof, either in Court or Chambers, of all such motions and applications (if any) as may require to be immediately or promptly heard.

PART II.
PROCEDURE.

CHAPTER VII.

GENERAL PROVISIONS.

91. ALL and several the provisions in this Code PART II.
 enacted which relate to procedure shall extend not The provi-
 only to all trials and proceedings in relation to sions in
 offences against this Code, but also to all trials and this Code
 proceedings in relation to offences committed wholly relating to
 or in part prior to the time of this Code coming into procedure
 force, and theretofore punishable upon indictment or to extend
 information, and that whether or not a prosecution to all trials
 in respect of any such offence has been commenced whatever.
 before the coming into force of this Code: provided
 that where such prosecution has been commenced
 prior to such day, the same shall be then pending.

92. Save and except such provisions as relate to Otherwise
 procedure, nothing in this Code contained shall apply not to
 or extend to any offence which was committed, either extend
 wholly or in part, prior to the date appointed for this to offences
 Code coming into force. committed
prior to
Code com-
ing into
force.

93. From and after the coming into force of this No person
 Code, no person whatever shall, in any trial or proceed- hereafter
 ing, whether civil or criminal, in any court of justice to be ex-
 in England or Wales, be at liberty to refuse to give cused from
 evidence, if competent to do so, or to reply to any answering
 question that may be otherwise lawfully addressed to upon the
ground of
crimi-
nating
himself.

PART II.

Husband
and wife
of an
accused to
be a com-
petent and
compel-
lable
witness
in any
proceed-
ing or
trial.

him, upon the ground that to do so would or might tend to criminate himself; but every person shall be bound to disclose his whole knowledge, and answer every question that may lawfully be put to him, notwithstanding. The husband or wife of any accused person shall, from and after this Code coming into force, be an equally competent and compellable witness with any other person in any criminal proceeding or trial; and any such husband or wife may be called and examined as a witness, either for or against his or her wife or husband respectively, or any person jointly accused with him or her, and either by the prosecution or for the defence. No person so called shall be at liberty to refuse to give evidence, or to answer any question, upon the ground that to do so would, or might tend to, criminate the wife or husband of the witness.*

* This clause would, if passed into law, involve two most important changes in the administration of criminal justice. At present any witness is at liberty to refuse to answer any question, if to do so would tend to criminate him. The privilege was conceded to humanity at a time when even trivial offences were punishable with death.

The husband or wife of an accused person is not permitted by the law of England to be a witness in a criminal case, except (a) the accused is charged with having inflicted, or being accessory to the infliction of, bodily violence upon his or her wife or husband (as to which see 1 Hale, P. C. 301; *Rex v. Azire*, 1 Strange, 633; and *Rex v. Audley*, 1 St. Tr. 393); (b) where a defendant is charged, under 24 & 25 Vict. c. 100, s. 54, with having abducted an heiress being under the age of twenty-one years; or with having taken away, or detained against her will, any woman from motives of lucre, or any woman by force, and whom he has married (1 Hale, P. C. 302; *Rex v. Perry*, 1 Hawk. P. C. 41; *Rex v. Wakefield*, 2 Lewin, C. C. 280)—in either of which cases a wife may give evidence against her husband; and in the case of treason, a wife is compellable to give evidence against her husband, and *vice versa*, “because the tie of allegiance is paramount to all others” (*Chitty’s Blackstone*, vol. i. p. 444).

In all cases falling within sections 4, 5, and 6 of 38 & 39 Vict. c. 86

94. From and after the date appointed for the coming into force of this Code, all proceedings in outlawry in criminal cases are hereby abolished.

PART II.

Outlawry
in criminal
cases
abolished.

95. Every Court exercising criminal jurisdiction under the provisions hereof shall sit in the county or district for which it acts, or in any county of a city, or town corporate, or detached part of a county included in, surrounded by, or adjacent thereto, or if such Court acts for a county of a city or town corporate, in any county adjacent thereto; provided that no trial, investigation, or proceeding before any such Court shall be invalid only by reason of its having taken place in any other county or district than the one in which such Court ought to have sat, except where it is expressly shown that the accused was in fact prejudiced thereby.

Place of
sitting of
Court
exercising
criminal
jurisdiction.

96. Any justice of the peace for any county, who is a justice also for any next or adjoining county, or

Justices
for ad-
joining

(Conspiracy and Protection of Property Act), the husband or wife of any accused is a competent witness.

I must refer to the Preface to this work for a more complete explanation of the grounds upon which the important changes suggested by this clause are justified; and I will only further add, that the Legislature having already, and so recently, expressly sanctioned the principle of the admissibility of a husband or wife's evidence in favour of an accused in one class of offence, it is difficult to see how a similar advantage can be fairly withheld from those who are accused of other offences.

In the case of those acts, *e.g.* libel, assault, fraud, etc., which it is in the sole discretion of the person aggrieved to treat as a mere civil wrong, and to commence an action for damages, or to institute a criminal prosecution, it is nothing short of an absurdity that, in the one case, the defendant and the husband or wife of a defendant are able to enter the witness-box, and to give evidence of exculpation or excuse; whilst, by the mere choice of remedy, over which a defendant (often innocent, or who, at all events, may have acted under circumstances of the strongest provocation, or other justification or excuse) has no control, he should be deprived of possibly his best means of defence.

PART II. counties may act for either county while in the other. for two counties, one of which is surrounded by the other, may do or direct to be done, whilst in either of the said counties, with respect to the other, any matter or thing which he is hereby authorized to do or to direct to be done in the county in which he is; and everything so done or directed to be done by such justice, or done by any person lawfully acting in obedience to such justice, shall be as valid and effectual in all respects and for all purposes, and every such direction given by such justice shall be obeyed in the same manner and by the same persons, as if such justice, at the time of doing such act or giving such direction, were in the county for which such act is done or direction given.

Justices for a county or division of a county may act for it in an adjoining city or place having an exclusive jurisdiction. 97. Any justice acting for any county at large, or for any riding or division of such county, may act as such at any place within any city, town, or other precinct, being a county of itself, or otherwise having exclusive jurisdiction, and situate within, surrounded by, or adjoining any such county, riding, or division respectively; and every act so done shall be as valid and effectual in all respects and for all purposes as if the same had been done within such county, riding, or division respectively: provided that nothing in this clause contained shall be deemed to authorize any justice for any county, riding, or division, not being a justice also for such city, town, or other precinct, or not having authority as a justice therein, or any constable or other officer acting under him, to act or intermeddle in any matters arising within such city, town, or precinct.

Magistrate 98. Any room or building in which any magistrate

or justice shall sit and act under the provisions of this Code shall be deemed a public Court for that purpose : provided that it shall be lawful for any such magistrate or justice when holding a preliminary inquiry, if he shall be reasonably of opinion that the ends of justice will be furthered thereby, in his discretion, to order that no person (other than the several persons authorized to be present and to take part, under the provisions hereof, in any inquiry then being held by such magistrate or justice) shall have access to, or be or remain in, such room or building without the consent or permission of such magistrate or justice;* and provided further, that any magistrate or justice may (if he shall be of opinion that the ends of justice will be thereby served) direct that any person who is intended to be examined as a witness on either side shall leave the Court, and remain absent therefrom during the examination of any other witness or witnesses. But it shall not be lawful for any magistrate or justice in petty sessions assembled to exclude the public generally when exercising summary jurisdiction under the provisions hereinafter contained.

PART II.
or justice
may ex-
clude the
public
from place
where pre-
liminary
inquiry
held, if the
interests
of justice
so require,
and may
order
witnesses
out of
Court
until
called.

99. The several forms in the Appendix to this Code Forms in

* At present the discretion to exclude is absolute (11 & 12 Vict. c. 42, s. 19). And not only is this so, but it is doubtful whether, under this section, even the professional advisers of an accused might not be excluded. That this doubt should even exist was, no doubt, due purely to oversight on the part of the legislature, because by 19 & 13 Vict. c. 42 (being a corresponding Act passed in the next year for Ireland), s. 19, whilst giving a similar power to exclude the public, expressly reserves the right of counsel or solicitor to be present.

The power to exclude the public from any Court of justice should obviously only be permitted to be exercised where there are special exigencies to justify its exercise.

PART II. contained, or forms which are substantially similar, or to a like or similar effect, shall be deemed, for all purposes, good, valid, and sufficient in law, and any of the said forms may be varied so far as may be necessary to render them applicable to the circumstances of any particular case.

Appendix, or forms substantially similar, valid, and may be varied where necessary.

Anything authorized to be done by a single magistrate or justice may be done by justices in petty sessions.

100. Whatsoever under the provisions hereof is authorized to be done by any magistrate or justice of the peace sitting alone, may in like manner be done by any justices in petty sessions assembled, acting for the county, division, or place within which such magistrate or justice has jurisdiction.

Any act required to be done by, or to be under hand of, a magistrate or justice may be done by or be under hand of chairman of petty sessions.

101. Whenever any act, under the provisions hereof, is required to be done by, or to be under the hand of, the magistrate or justice acting in conformity with the powers and provisions hereof, and the proceedings take place before justices in petty session, and not before a single magistrate or justice, any such act shall be done by or shall be under the hand of the justice for the time being acting as chairman of such petty sessions.

Jurisdiction of High Court of Criminal Justice.

102. The Judges of the High Court of Criminal Justice, and Her Majesty's justices included in any Commission of Oyer and Terminer or Gaol Delivery, shall have jurisdiction to try all offences whatever against this Code.

Offences triable by courts of quarter sessions.

103. The courts of quarter sessions shall have jurisdiction to try all offences against this Code, save and except the following, viz. :

Treason ;

Assaults upon the Sovereign ;

Public Contempts against the Sovereign ;
Riots ;
Illegal Drilling ;
Seducing Soldiers from their Allegiance, or
 Inciting to Mutiny ;
Unlawful Oaths ;
Sedition ;
Taking or Administering Unlawful Oaths ;
Piracy ;
Slave Trading ;
Murder ;
Manslaughter ;
Infanticide ;
Attempt or Incitement to Commit Suicide ;
Attempt to Murder ;
Sending Letter Threatening to Murder ;
Procuring Abortion ;
Concealment of Birth ;
Rape ;
Bigamy ;
Abduction ;
Unnatural Offences ;
Causing Grievous Bodily Harm ;
Offences committed with Violence to the
 Person, etc. ;
Acts and Omissions Endangering Life, etc. ;
Challenges and Fighting ;
Public Insult to Religion ;
Arson and Malicious Injuries by Gunpowder, etc. ;
Burglary ;
Robbery ;
Forgery and Offences resembling Forgery ;
Perjury ;

PART II.

Offences against the Public Coin ;
 Obtaining by Fraud the Execution, etc., of
 Valuable Securities ;
 Frauds by Officers of Public Companies ;
 Fraudulent Acts in relation to Title ;
 Libel ;
 Offences by or in Relation to Public Officers ;
 Breaches of Duty tending to Public Danger ;
 Unlawful Coercion ;
 Sending Unseaworthy Ships to Sea ;
 Interference in Foreign Hostilities ;
 Fraudulent Acts in relation to Elections ;
 Personation, Bribery, and Undue Influence ;
 including all offences comprised in clauses 482, 486
 —489, 491—493, 495—497, 500—504, 506, 510—
 512, 514—516, 518, 520, 521, 523—525, 528—532,
 534—540, 542, 544—546, 548, 550, 551, 559, 561,
 563, 564, 566, 567, 569, 570, 572, 574, 576, 583,
 589, 590, 593, 595, 597, 599, 601—604, 612—617,
 620—623, 626—630, 641, 642, 646, 659, 664—667,
 671—674, 676, 679, 685—688, of this Code ; or any
 conspiracy or attempt, or assault with intent, to
 commit any or either of the said offences specifically
 mentioned, or comprised in either of the said clauses,
 or any charge of being accessory to the commission
 or attempted commission thereof ; or any conspiracy
 other than a conspiracy to commit an offence which
 is triable, under the provisions hereof, at quarter
 sessions when committed by one person ; or any
 other offence for which an offender is liable, upon a
 first conviction, to be sentenced to penal servitude
 for life or for a term of twenty years.*

* This is, to some extent, an alteration of the present law. It is pro-

104. Every Court having criminal jurisdiction under the provisions of this Code shall have jurisdiction to try any person for any offence, under the provisions hereof, for which such Court is otherwise competent to try such person, wherever such offence may be alleged to have been committed.

PART II.
Jurisdiction of criminal Courts, although offences not committed within their area.
Abolition of *venue*.

105. No *venue* shall be necessary, and none need be stated in any Act of Accusation or otherwise.

106. No proceedings, either before a magistrate or justice of the peace, or before any Court having criminal jurisdiction under the provisions of this Code, shall be allowed, at the instance of any private prosecutor, against any person in respect of any offence or alleged offence against this Code, unless such proceedings are commenced against the offender or alleged offender in respect thereof, before a magistrate or justice of the peace, in accordance

Limitation of time within which a private person may institute a prosecution.

vided by statute that no court of quarter sessions shall try any person for treason, murder, or capital felony; misprision of treason; offences against the Queen's title, prerogative, or government, or either House of Parliament, or subject to the penalties of *præmunire*; blasphemy and offences against religion; administering or taking unlawful oaths; perjury, subornation of perjury, and kindred offences; forgery; maliciously setting fire to corn, trees, etc.; bigamy and offences against the laws relating to marriage; abduction of women and girls; concealing births; seditious, blasphemous, or defamatory libels; bribery; conspiracy, except conspiracy to commit an offence which is triable at quarter sessions when committed by one person; stealing, etc., records, wills, or documents evidencing title to real estate, etc.; persons armed pursuing game by night; frauds by agents, trustees, bankers, or factors; nor for any felony which, when committed by a person not previously convicted of felony, is punishable with penal servitude for life (*vide* 5 & 6 Vict. c. 38; 20 & 21 Vict. c. 3, s. 6; 24 & 25 Vict. c. 96, ss. 75-87; and, as to offence of being armed at night in pursuit of game, 9 Geo. 4, c. 69, s. 9). Offences against the law relating to bankrupts were likewise excluded by 5 and 6 Vict. c. 38, from the jurisdiction of courts of quarter sessions; but by 32 and 33 Vict. c. 62, s. 20 (the Debtors' Act, 1869), all offences under that Act are brought within the jurisdiction of quarter sessions.

PART II. with the provisions of this Code, within twelve months next after the commission of such offence or alleged offence; or within one month after the fact of such offence having been committed, or being reasonably believed to have been committed, comes to the knowledge of any person actually injured or aggrieved thereby, where such knowledge is first acquired by such person after the expiration of twelve months from the commission of the said offence: provided that nothing in this clause contained shall affect, or in any way restrict, the right of the Crown to direct a prosecution to be instituted against any person who has committed any offence under the provisions of this Code at any time, save where the contrary is hereby expressly enacted.*

Civil right
not af-
fected by
reason of
act sued
on being
an offence
against
this Code.

107. From and after the coming into force of this Code, no civil right or remedy which any person has against any other person, for or in respect of any act or default, shall be affected or suspended by the fact that such act or default amounts to an offence under the provisions hereof.†

* This provision is new. At present there is no such *general* limitation. In the case of treason, there is a special statutory enactment; it being provided by 7 Will. 3, c. 3, that no person shall be prosecuted for treason, other than an attempt to assassinate the sovereign, except within three years of the commission of the offence. And in the case of a few indictable offences created by statute, there is a limitation as to the time within which a prosecution may be commenced.

† According to the old cases, if a particular act or default amount to a felony, although an injury of a civil nature may also have resulted therefrom, the person injured is not allowed to enforce his civil rights, unless and until he has instituted a criminal prosecution. This is obviously unjust, and recent decisions have cast some doubt as to whether these cases express the law at the present day: *vide Wells v. Abraham*, L. R., 7 Q. B. 554. The reason of the rule was, doubtless, to encourage private persons to prosecute those who had been guilty of a criminal offence. The next clause would, it is conceived, provide sufficiently for

108. If, in any proceeding, civil or criminal, or in any judicial inquiry, including any examination of any person whatever under any proceeding in bankruptcy, it appears to the Court before whom any such proceeding or inquiry is pending, or has taken place, upon reliable evidence, that any person has been guilty of an offence against this Code; or if it appears to such Court that any person has been guilty of perjury, as hereby defined, in any evidence given before it in any such proceeding, inquiry, of examination; such Court may, if in its discretion it shall think fit, by warrant under the seal of the said Court, direct that the person so offending be taken into custody, and be conveyed, with all convenient speed, before some magistrate or justice of the peace acting in and for the county or district either of such Court, or within which the offence was committed; and such magistrate or justice shall, upon such accused being brought before him, deal with such accused, and the proceedings in reference to the charge preferred against him shall be the same, in all respects as though such accused person had been brought before such magistrate or justice upon a warrant issued by him, or by some other magistrate or justice having jurisdiction in that behalf.*

PART II.
But Court
may direct
prosecu-
tion.

this, whilst leaving it open to a private individual (whom to compel to institute and carry on a criminal prosecution might involve a serious hardship) to obtain redress by civil proceedings for an injury which he is content to measure by pecuniary damages. Thus, the public interest and private rights are alike considered and provided for.

* By 14 & 15 Vict. c. 100, s. 19, any Court has now the power to direct any person to be taken into custody and prosecuted, if the Court is of opinion that such person has been guilty of perjury in a proceeding before it. The person so directed to be taken into custody and prosecuted is in that case deprived of the benefit of a preliminary inquiry before a magistrate,

PART II.

No person
to be tried
upon a
criminal
informa-
tion.

109. No person shall hereafter be accused by, or tried upon, any criminal information filed in the High Court of Justice by or on behalf of the Attorney-General, the Master of the Crown Office, or other person whatsoever.*

Crown not
to enter
a *nolle
prosequi*
in prose-
cution by
private
person,
save with
his con-

110. It shall not be lawful for the Crown, after the coming into force of this Code, to enter a *nolle prosequi* in respect of any offence under the provisions hereof, and a prosecution for which is instituted by any person other than directly by the Crown, nor shall any proceedings be stayed at the instance

and a copy of the depositions of the witnesses against him, and other privileges secured to persons accused of a similar offence, but in whose instance their prosecution has not been directed in that manner by the Court.

The most modern instance of the exercise of this power, which will be within public recollection, is the case of the person known as "The Claimant" (who claimed to be Sir Roger Doughty Tichbourne, and to be entitled to certain valuable estates), who was ordered to be prosecuted for perjury by the late Lord Chief Justice of the Common Pleas, Sir William Bovill, for evidence given in the course of an action of ejectment involving the right to the estates in question. It was made a subject of grievance in that case that the accused had not the advantage of a preliminary investigation before a magistrate, especially as the statute authorizes a Judge as well to direct a person, whom he is of opinion has committed perjury before him, to be taken before a magistrate in order that the charge may be inquired into; and the discretion of the learned Judge, in adopting the course he did, was much questioned at the time, even by many who were convinced that an imposture had been attempted.

There would seem to be no valid reason for depriving an accused, in a case where the Court directs a prosecution, of the protection afforded to other accused persons; and whilst I would still further extend the power of the Court to direct a prosecution where it thinks it right to do so, upon evidence produced before it, I still think the same course should invariably be pursued as in the case of an ordinary prosecution, and I have framed this clause in accordance with that view.

* This clause proposes to take away a power that now exists, in order that the entire criminal law and procedure may be assimilated, and that an exceptional privilege, for which there would be no justification if this Code should pass into law, may not remain in the hands of the Crown or any favoured person.

of or on behalf of the Crown in respect of any such offence so instituted, save and except with the consent of the prosecutor, and with the sanction of the Court before whom the person charged with such offence is convicted or directed to be tried.*

PART II.
—
sent and
sanction
of Court.

111. From and after the coming into force of this Code, writs of error in criminal cases, and all proceedings thereon, shall cease and be abolished: provided that nothing in this Code contained shall be construed to prevent the granting of any writ of error in relation to any trial for any offence committed prior to this Code coming into force, or to affect any proceedings thereunder.

Writs of
error
abolished.

112. From and after the coming into force of this Code, the terms "felony" and "misdemeanour," theretofore existing, shall be abolished. All offences against this Code shall be proceeded against and punished in manner hereby provided, and not otherwise; and no punishment, disqualification, or disability shall be inflicted, or shall attach to any conviction for anything which is an offence under the provisions hereof, save and except such punishment, disqualification, or disability is hereby expressly authorized and enacted.†

Terms
"felony"
and
"misdemeanour"
abolished.

113. From and after the coming into force of this Code, no person shall be committed to take his trial,

No one
to be
arraigned

* This clause proposes to take away from the Crown the power, which it now possesses, of screening an offender from being brought to trial. It may be said it is improbable that the power would be exercised in the present age. In that case its retention is superfluous. The right of pardon, as a prerogative of the Crown, and an act of grace, would still remain.

† *Vide* Preface, p. xiii.

PART II.
 or tried
 upon a
 coroner's
 inquisition.
 Provision
 where a
 coroner's
 jury find
 that an
 offence has
 been committed
 by any
 person.

nor shall any person be arraigned, upon any inquisition taken before any coroner, or in consequence of any verdict found by any coroner's jury; but in any case in which any such jury shall return a verdict or finding declaring in effect that any person has committed any act amounting to an offence against this Code, which such jury has by law authority to inquire into, it shall be the duty of the coroner before whom such verdict or finding is returned (if the person or persons, or either of them, affected by such verdict or finding be not already charged with the said offence before a magistrate or justice), by warrant under his hand, to direct that such person be taken into custody, and be conveyed, with all convenient speed, before some magistrate or justice of the peace acting in or for the district either of such coroner, or within which the offence was committed; or such coroner may direct such person to enter into a recognizance before him, with or without a surety or sureties, to appear before such magistrate or justice. In either case, it shall be the duty of the coroner to transmit to such magistrate or justice the depositions taken before him in the matter. Upon any such person being brought or appearing before any such magistrate or justice, he shall proceed in all respects as though such person had been brought or had appeared before him upon a warrant or summons issued by him, or by some other magistrate or justice having jurisdiction in that behalf.*

* This is new. At present, there is frequently a dual inquiry, and sometimes conflicting decisions—a magistrate committing for trial, and a coroner's jury exonerating the person committed from blame; or *vice versa*, a coroner's jury finding a hostile verdict, and a magistrate exone-

114. Whenever, in any inquiry or proceeding, or upon any trial under the provisions hereof, any person able to give any material evidence, either for the prosecution or defence, is in prison or other lawful custody in England or Wales, the High Court of Criminal Justice, or any Judge thereof, sitting either in Court or Chambers, may, upon proof of the said facts, by an order in writing under the seal of the said Court, direct the keeper of the prison, or other person in whose custody such first-named person is, to have and produce such person, at any place and time to be named in such order, to testify and give evidence, and so on from day to day until he shall have given his evidence and be discharged from attendance; and upon production of the said order under the seal of the said Court, the person to whom the same is directed shall be bound to obey the same, and shall be entitled to receive his reasonable expenses incurred in and incidental to bringing up such prisoner, not exceeding at the rate of one shilling a mile. Any such payment shall be deemed part of the costs in the case.

PART II.
The Court or a Judge may order a prisoner to be brought up to give evidence.

115. No writ of *habeas corpus ad testificandum* shall in future be necessary for any such purpose, nor shall any such writ be issued.

No writ of habeas necessary.

116. Whenever, in any proceeding or trial under the provisions of this Code, an oath is prescribed and is taken by any witness, such oath shall be taken by the witness saying audibly: "I solemnly swear that I will, without reserve, speak the truth, the

Form of oath to be taken by witnesses in proceedings under this Code.

rating the accused. Moreover, to place a man upon his trial upon the result of an inquisition taken in his absence, as is sometimes the case, is a manifest hardship.

PART II. whole truth, and nothing but the truth; and this I now call upon God to witness." *

Form of
oath in
case of
affidavit
or declara-
tion in
any pro-
ceeding
under this
Code.

117. Whenever any person shall, in any proceeding under the provisions of this Code, make oath as to the truth of any affidavit or declaration in writing, such oath shall be taken before some commissioner or other person authorized to administer oaths in proceedings depending in the courts of law in England, by the person taking the same saying audibly: "I solemnly and without reserve swear that the signature [or mark, if the deponent be unable to write his name] to this affidavit [or declaration] is in my handwriting, and that everything that is stated therein is the truth, the whole truth, and nothing but the truth; and this I now call upon God to witness."

Where
more than
one
deponent.

118. In any case where an affidavit or declaration is made by more than one deponent, the form of

* I suggest this as being more solemn and impressive than the present formulary, which consists in the words of the oath being spoken by the officer of the Court, in a more or less reverent and monotonous manner; the witness simply giving his assent thereto by kissing a Testament—a practice the least objection to which is, perhaps, that it opens the door widely to, and invites, mental reservation.

I have personally but small confidence in the restraining influences of an oath in any form, if the person to whom it is administered is not otherwise disposed to speak the truth, and especially so in the case of those who, like policemen and others, take the oath with damaging frequency. But at least we have a right to require that the ceremony, if retained, shall be as impressive as may be. The custom pursued in some Roman Catholic countries of the witness declaring that he will testify the truth with arms outstretched towards a crucifix suspended to the wall, whatever objections it may be open to, is not without its impressiveness upon those for whom it is provided. The administration of the oath at our own courts-martial, which requires the person taking it to pronounce the words "So help me God" audibly, is a recognition, to some extent, of the principle for which I contend in this clause.

the oath shall be varied so as to limit the same to facts to which each deponent deposes. PART II.

119. Whenever any person called as a witness, or required or desired to make any affidavit, declaration, or deposition, in any proceeding or trial under the provisions hereof, shall allege that he entertains a conscientious objection to taking the oath hereby prescribed, or that such oath would not be binding upon his conscience, or, being objected to as incompetent to take an oath, shall admit that such oath would have no binding effect upon his conscience, it shall be lawful for such person, and he may be required if called as such witness, to make a solemn affirmation according to the facts, in the words following, that is to say: "I do solemnly affirm and declare that I conscientiously object to take the oath prescribed by the Penal Code [or that the oath prescribed by the Penal Code would have no binding effect upon my conscience], and that I will, without reserve, speak the truth, the whole truth, and nothing but the truth." In the case of any such person who proposes to make any such affidavit or declaration, the same shall be taken before some commissioner or other person authorized to administer oaths or affirmations in lieu of oaths in proceedings depending in the courts of law in England, and such commissioner or other person shall, after the deponent has made such affirmation, require the deponent to state that the signature (or mark) to the affidavit or declaration is his, and that everything that is stated therein is true.

120. If any person proposing to depose to any Provision
in case of

PART II. affidavit or declaration is unable to read, the commissioner or other person before whom such affidavit or declaration is made shall cause the same to be read over, in his presence, to the person proposing to make the same, and shall in the *jurat* certify that he has duly caused this to be done.

Affirmation to be of same force and effect as an oath.

121. Any solemn affirmation or declaration made under the authority hereof shall be, to all intents and purposes, of the same force and effect as if the person making the same had taken an oath in the form prescribed by this Code.*

Where accused unable to understand English, evidence to be interpreted.

122. Whenever, in any trial or proceeding in any Court exercising criminal jurisdiction, any accused person is a foreigner, and unable properly to understand the English language, the whole of the proceedings and the evidence, as the same proceed, shall be interpreted to such accused, so that he may fully understand the same, by an interpreter attached to the High Court of Criminal Justice; or in any case where such interpreter cannot conveniently be present, but not otherwise, by leave of the Court before whom the case is pending, by some other person having a competent knowledge of English, and of the language spoken by and to be interpreted to the accused, and not being a witness or otherwise interested in the case. And whenever, in any trial or proceeding, any witness is proposed to

Evidence of foreign

* At present, any person who conscientiously objects to take an oath in a criminal proceeding, may make an affirmation in lieu thereof (24 & 25 Vict. c. 66). And it is now further provided by 32 & 33 Vict. c. 68, that if any person objects to take an oath, or is objected to as incompetent to take an oath, such person may, if the presiding Judge is satisfied that the taking of an oath would have no binding effect upon his conscience, make a solemn declaration in lieu of oath.

be examined who is unable to speak fluently the English tongue, the oath to be administered to and taken by such witness shall be interpreted and explained to such witness, and the evidence of such witness, and all questions put to him, shall be interpreted, as the same proceed, in like manner. Every such interpreter, whether official or otherwise, shall, before being permitted to interpret in any case, first take an oath by saying audibly: "I solemnly swear that I will faithfully, well, and truly interpret the proceedings and evidence in this case, according to the best of my skill and knowledge; and this I now call upon God to witness;" and, in the case of any person not being an official interpreter attached to the High Court of Criminal Justice, such person, before being admitted to interpret, shall at the same time, in addition, make oath that he possesses a competent knowledge of the foreign language which or into which he proposes to interpret, and words to that effect shall be included in the above form of oath.

PART II.
witness
unable to
speak
English
fluently to
be inter-
preted.

123. Whenever any person proposing to make any affidavit or declaration is a foreigner and unable properly to understand the English language, the same, and the oath to be administered, shall be interpreted to the deponent, by some person who shall first take an oath that he possesses a competent knowledge of the foreign language spoken by the deponent, and that he will faithfully, well, and truly interpret the oath and the contents of the affidavit or declaration.

Provision
in case of
foreigner
proposing
to make
an affi-
davit.

CHAPTER VIII.

ARREST, ETC., OF OFFENDERS, AND PROCEEDINGS IN
MAGISTRATES' COURTS.

PART II. 124. A PROSECUTION against any person for any-
 Prosecu- thing done or omitted in contravention of the Penal
 tion against offender, Code shall be commenced by a warrant or summons
 how com- issued in accordance with the provisions hereof, save
 menced. and except in the cases for which express provision is
 made in clauses 108 and 113 respectively, and in
 any case where, under the provisions of this Code,
 it is lawful to apprehend without a warrant.

What 125. Any person who, in any part of England or
 offenders may be Wales, (a) commits any offence upon conviction for
 which, under this Code, a sentence of death, penal
 apprehended without servitude, or imprisonment with hard labour may be
 a warrant by any awarded, in the actual presence of any magistrate,
 person, justice, constable or other officer of the peace, or
 whether official private person; (b) is found in the actual act of
 or private. committing any such offence by any magistrate
 or justice, constable or other officer of the peace, or
 any private person; may be apprehended without a
 warrant by or by order of any such magistrate or
 justice, or by any such constable or other officer of
 the peace; or may be apprehended by any such
 private person, if such person has reasonable ground

to believe that the person who so committed, or whom he found in the actual act of committing, such offence will either not be otherwise forthcoming, or will complete the offence which he is so found committing, or will commit some other offence which is punishable in like manner as aforesaid under the provisions of this Code. PART II.

126. Any constable or other officer of the peace may arrest without warrant any person who has escaped out of his lawful custody, being in such custody upon any criminal charge. Arrest after an escape.

127. Any constable or other officer of the peace may likewise arrest without warrant any person whom he finds loitering or lying in any highway or place between the hours of nine at night and six in the morning, and whom he has reasonable ground for believing has committed or is about to commit any offence against this Code, for which any person is liable on conviction to be sentenced to death, penal servitude, or imprisonment with hard labour. Arrest of persons loitering at night, having committed or suspected of being about to commit certain offences.

128. Every person apprehended under any of the provisions in the last three preceding clauses contained shall be forthwith conveyed to the nearest police station, and shall be thence taken, at the earliest practicable moment, before some magistrate or justice of the peace within whose jurisdiction such person is apprehended. Persons arrested without warrant to be taken before magistrate or justice forthwith.

129. Any person who has committed, or whom there is reasonable ground for believing has committed, any offence in any part of England or Wales for which such person is liable, under the provisions hereof, to be sentenced, upon a first conviction, to Arrest of persons who have committed or are believed to have committed

PART II. death or penal servitude, may, if there be reasonable ground to believe that such person will not otherwise be forthcoming, be apprehended without warrant by any magistrate, justice, constable, or other officer of the peace in any part of England and Wales, and conveyed by such magistrate, justice, constable, or other officer of the peace to the nearest police station, and shall be thence taken, at the first practicable moment, before some stipendiary magistrate or justice of the peace within whose jurisdiction such person is apprehended.*

Procedure where offender apprehended without warrant for offence 130. Whenever any person is apprehended under the provisions of the last preceding clause, and taken before a magistrate or justice within whose jurisdiction such person is apprehended, charged with having committed any offence to which such clause

* By the common law, any person who is guilty of felony, or if a felony has in fact been committed, any person who is reasonably suspected of having committed the same, may be arrested by any person, whether a peace officer or private individual, without warrant; any peace officer may go still further, and may arrest without warrant any person whom he reasonably suspects of having committed a felony, although it may turn out that no such felony has been in fact committed (*vide* 2 Hale, P. C. 78; and Fost. 318).

The law of summary arrest in the case of misdemeanours is, however, of complex character.

Various statutory enactments are in force, supplementing the common law as to summary arrest, both in relation to felonies and misdemeanours (*vide* particularly 14 & 15 Vict. c. 19, s. 11; and 24 & 25 Vict. cc. 96, 97, and 99).

As the question whether particular acts amount in law to felony or misdemeanour is one which skilled lawyers have often considerable difficulty in determining, it follows that persons incur serious risk in taking upon themselves to apprehend, or even in causing to be apprehended by a police-constable, any person whom they believe to have committed crime. The four clauses of this Code dealing with the question of arrest without warrant will be seen to be extremely simple, and, it is submitted, go quite far enough.

applies elsewhere than within the jurisdiction of such magistrate or justice, such magistrate or justice shall have and exercise in all respects the same jurisdiction and powers as are hereby given or required to be exercised in the case where the offence with which the accused is charged has been committed within the jurisdiction of such magistrate or justice.

PART II.

committed elsewhere than in district where apprehended.

131. Provided that when any magistrate or justice before whom any accused is brought or appears, under any provision of this Code, is of opinion that an inquiry into the facts relating to any offence with which such accused is charged with having committed, elsewhere than within the jurisdiction of such magistrate or justice, would be more conveniently had before some magistrate or justice within whose jurisdiction such offence is alleged to have been committed, the magistrate or justice before whom such accused is brought may, upon it being shown to the reasonable satisfaction of such magistrate or justice that there is reasonable ground for believing that such accused person has committed the offence charged against him, by warrant in form (A) in the Appendix hereto, under his hand, order such accused to be taken before some magistrate or justice within whose jurisdiction such offence is alleged to have been committed, or may admit such person to bail to appear on a day to be named before such last-mentioned magistrate or justice;* and shall, if he shall issue his warrant, at the same time deliver any information or deposition which may have been

Magistrate or justice may remit accused to be examined before magistrate or justice within whose jurisdiction offence committed.

And may admit accused to bail.

Information and depositions to

* The power to admit to bail in such a case is new, but is obviously a reasonable one, and one that, in justice to an accused, ought to exist.

PART II. taken before him in relation to such accused to the constable or other officer of the peace to whom the execution of the said warrant shall be entrusted, to be by him delivered to the magistrate or justice before whom such accused shall be taken in obedience to the said warrant; and, in any case in which he shall admit the accused to bail, shall transmit the information, depositions, and recognizance to the magistrate or justice before whom the accused is directed to appear. Any such information or deposition shall be deemed to be taken in the case, and shall be as valid to all intents and purposes, and shall be dealt with in all respects, as if it had been taken by or before the magistrate or justice before whom the accused shall be brought under the said warrant.

Any person may lay an information against an offender.

132. Any person whatever, who, upon reasonable or probable grounds, believes that any person has committed an offence against this Code, may make a complaint or lay an information under the provisions hereof before any magistrate or justice of the peace having jurisdiction to issue a warrant or summons against such accused person in respect of such offence.

County and district within which magistrates and justices may act.

133. Every magistrate or justice of the peace may do anything which he is by this Code authorized to do, in and for any county or district for which he is authorized to act as such.

Saving as to jurisdiction of magistrates created by charter or statute.

134. Nothing in this Code contained shall in any way affect or restrict any power or authority conferred, by or under the provisions of any charter or statute not hereby repealed, upon any magistrate or justice of the peace, except the contrary be expressly enacted herein.

135. Whenever it shall be made to appear to the satisfaction of any stipendiary magistrate, or to any one or more of Her Majesty's justices of the peace for any county, riding, division, city, liberty, borough, or place (hereinafter called county or place) within England or Wales, that any person has committed, or that there is reasonable ground for believing that any person has committed, any offence against this Code within the limits of the jurisdiction of such magistrate or justice of the peace; * or in any case in which it is shown, to the reasonable satisfaction of such magistrate or justice of the peace, that any person has committed, or is reasonably believed to have committed, any offence against this Code on the high seas, or on land beyond the seas, for which he is liable to be proceeded against in England or Wales under the provisions of this Code, and that such person then is, or upon reasonable grounds is believed to be, within the jurisdiction of such magistrate or justice; it shall be lawful for such magistrate or justice of the peace, and he is hereby required, to issue either a warrant for the apprehension of such person, or

PART II.
In what
cases
magistrate
or justice
to issue a
warrant or
summons.

* By 11 & 12 Vict. c. 42, s. 1, a justice is authorized to issue a warrant, not only in respect of an indictable offence committed within his jurisdiction, but also if the person guilty or "suspected" of having committed such offence is residing, or is or is "suspected" to reside or be, within the jurisdiction of such justice. I submit that the warrant should, in all cases, when the offence is committed on land in England, be granted by the justice within whose jurisdiction the offence was committed, and several weighty arguments may be adduced in support of this view.

The word "suspected" ought not to find place in a Code of Law, and is not used by me throughout this draft Code.

One reason for giving justices power to issue a warrant to apprehend an offender resident within their jurisdiction for an offence committed beyond it was, no doubt, owing to the legal necessity for procuring a warrant granted in one county to be backed before it could be executed in another. This system, I propose, should be dispensed with.

PART II. a summons directed to such person, requiring him
 — to appear before such magistrate or justice of the
 peace, or before any other magistrate or justice
 of the peace having jurisdiction to issue any such
 summons, at a time and place to be mentioned in
 such summons; and such warrant or summons shall be
 in the form (B) or (BB) respectively in the Appendix
 thereto, or as nearly so as circumstances will admit.

Form of
warrant or
summons.

No war-
rant or
summons
to issue
unless
upon in-
formation
in writing
and on
oath.

136. No such warrant or summons shall be issued
 until an information in writing, on the oath or
 affirmation of the informant, or of such witness or
 witnesses as such magistrate or justice of the peace
 may consider necessary, shall have been made and
 filed; and such information shall be in the form (C)
 in the Appendix hereto, or as nearly so as circum-
 stances will admit.*

No war-
rant to
issue in
first
instance,
except in
cases men-
tioned in
this
clause.

137. It shall be in the sole discretion of such magis-
 trate or justice of the peace either to issue a warrant
 in the first instance, or a summons, as he shall think
 fit: provided that no warrant shall issue in the first
 instance under the provisions of this Code, except
 in such cases as the magistrate or justice of the
 peace granting the same is of opinion, upon the
 information hereinbefore prescribed laid before him,

* The practice at present in reference to granting summonses for in-
 dictable offences varies in different Courts. In some Courts an information
 in writing and upon oath is rigorously exacted; in others, it is dispensed
 with where a summons and not a warrant is granted. The practice should
 at least be uniform; and when it is considered what grievous injury may
 be wrought by granting a summons against an innocent person, charging
 him with having committed a crime, opinion will surely be in favour of
 requiring so reasonable a precaution as is provided by this clause.

The clause would also, to some extent, prevent the improper practice of
 obtaining a summons charging a criminal offence, with a view to obtain a
 pecuniary settlement.

(a) that the person informed against would not probably appear in obedience to a summons; or
 (b) that it is otherwise for any cause in the interests of justice that a warrant in the first instance should issue.*

PART II.

138. Before granting a warrant under the provisions of the preceding clauses, the magistrate or justice of the peace applied to to issue the same shall require such evidence in writing and upon oath as to him shall seem fit. Whenever any information is laid before any magistrate or justice under the provisions hereof, it shall be lawful for such magistrate or justice, if he shall think fit, to cause to be served then and there, or at any subsequent period, either before or after the apprehension of the accused person named in or referred to in such information, upon the person or persons deposing to such information, a summons commanding such person or persons to appear before such magistrate or justice, or before any other magistrate or justice, before whom such accused person shall appear or be brought, when and as often as the same shall happen, and to prosecute and give evidence, or give evidence only, as the case may be, and to produce all such books, papers, and other evidence as may be in the possession or under the control of any person so summoned necessary to support the charge against such accused person. Such summons shall be in the form (D) in the Appendix hereto.†

Magistrate or justice may require satisfactory proof before granting warrant.

Whenever any information laid, summons may be served upon deponents to same, with a view to secure their attendance at hearing, etc.

Form of summons.

* The proviso to this clause is designed to restrain any arbitrary exercise of the power of issuing a warrant to apprehend, where the interests of justice would be fully secured by issuing a summons.

† This clause involves an entirely new provision. It is designed to meet

PART II.

Service of
summons
on person
charged
with
offence.

Mode of
service
where
personal
service
cannot be
effected.

If person
summoned
wilfully
fail to
appear,
warrant
may issue
upon proof
of service.

139. In any case where a magistrate or justice of the peace shall issue a summons under the provisions hereof, a copy of such summons shall be served personally on the person summoned, two clear days at least before the day on which the same is returnable, by a constable or other officer of the peace: provided that where it is shown at the time appointed for the hearing of the said summons, to the satisfaction of the magistrate or justice issuing the same, or to the satisfaction of any magistrate or justice sitting and having jurisdiction to hear and determine the same, that personal service could not be effected, after due diligence used for that purpose, but that a copy of such summons has been left, two clear days at least before the day on which the same is returnable, with some adult person at the place where the person named in such summons then lived, and that there is reasonable ground for believing that such summons has come to the knowledge of the person summoned, such summons shall be deemed to have been duly served as fully as though the same had been served personally upon the person summoned.

140. If any person against whom a summons has been issued and served, either personally or otherwise, in accordance with the provisions hereof, whether the same be a first summons, or a second summons as hereinafter provided, fails to appear

a defect in the present law, which has been again and again called attention to and lamented by magistrates, viz. that they are often powerless to prevent the withdrawal of a prosecution. Taken in connection with clause 137, it may be hoped a substantial check would be put upon the practice of private individuals setting the criminal law in force from interested motives, and not with any view to the interests of justice.

thereto at the time and place therein mentioned, PART II.
 it shall be lawful for any magistrate or justice of
 the peace having jurisdiction to issue the said sum-
 mons, upon proof in writing and on oath, to the
 satisfaction of such magistrate or justice, that
 such summons has either been personally served
 or has been duly left in manner lastly herein-
 before provided, and that the same, having been
 left as aforesaid, is reasonably believed to have come
 to the knowledge of the person summoned, and
 that such person wilfully disobeys the same, to issue
 his warrant for apprehending the person so sum-
 moned; and such warrant shall be in the form (E) Form of
warrant.
 in the Appendix hereto, or some other like or similar
 form.

141. Whenever any such magistrate or justice of Where
omission
to attend
not wilful,
a second
summons
may be
issued.
 the peace shall be of opinion that any person,
 against whom a summons has been issued and served
 in accordance with the provisions hereof, does not
 appear thereto through any accidental circumstance,
 and not from wilful disobedience, it shall be lawful
 for the said magistrate or justice to issue a second
 summons directed to such person, requiring him to
 appear before such magistrate or justice of the
 peace, or any other magistrate or justice of the
 peace having jurisdiction to issue such summons, at
 a time and place to be mentioned in such summons;
 and such second summons shall be in the form (F) Form of
second
summons.
 in the Appendix hereto, or as nearly so as cir-
 cumstances will admit, and shall be served in the
 same manner in all respects as in the case of a first
 summons under the provisions hereof.

PART II.

Warrant
may be
issued in
certain
cases,
notwith-
standing
summons
issued and
time for
appearing
thereto
not ex-
pired.

Form of
warrant.

Warrants
and sum-
monses to
be under
hand of
magistrate
or justice.
By whom
person
against
whom
warrant
issued
may be
appre-
hended.

Person
against
whom
warrant
issued
may be
appre-
hended in
any part

142. If, after having issued either a first or second summons against any person in accordance with the provisions hereof, it shall be made to appear to the satisfaction of any magistrate or justice of the peace having jurisdiction to issue such summons, upon an information in writing and upon oath, that there is good reason to believe that the person against whom such summons has been issued will not appear to such summons, or that it is otherwise for any cause in the interests of justice that a warrant should issue, such magistrate or justice of the peace may, if he shall think fit, issue a warrant for the apprehension of such person, notwithstanding that a first or second summons has been issued and that the time for the appearance of the accused under such summons has not yet arrived; and such warrant shall be in the form (G) in the Appendix hereto, or some other like or similar form.

143. Any warrant or summons issued under the provisions hereof shall be under the hand of the magistrate or justice issuing the same.

144. Any person against whom a warrant has been issued in pursuance of the provisions hereof may be apprehended by any constable or other officer of the peace whatever, whether holding such warrant or not.

145. Where any person against whom any warrant has been issued under the provisions hereof shall be or be found in any part of the United Kingdom of Great Britain and Ireland not being within the jurisdiction of the magistrate or justice issuing such warrant, such warrant may be executed, and

the person named or referred to therein may be apprehended under such warrant, in any part of the said United Kingdom where he shall be, by any constable or other officer of the peace whatever, whether holding such warrant or not, in the same way as though such person was, at the time of the apprehension, within the jurisdiction of the magistrate or justice issuing such warrant; and no endorsement of such warrant or other authorization whatever, by any magistrate or justice for any county or place where such person shall be, or be found, or be apprehended, shall hereafter be necessary as a condition precedent to the lawful execution of any such warrant in any part of the said United Kingdom, any law, statute, or custom to the contrary notwithstanding.*

PART II.
of the
United
Kingdom.

No back-
ing of
warrant
to be here-
after
necessary.

146. Whenever any person is taken into custody or apprehended upon a warrant under the provisions hereof, the accused shall, at the earliest practicable moment, be taken before a magistrate or justice within whose jurisdiction the offence with which the accused is charged is alleged to have been committed. Such accused may be taken before any such magistrate or justice at any place where, under the provisions hereof, such magistrate or justice is authorized to sit and act.

Person
taken into
custody or
appre-
hended on
warrant
to be im-
mediately
taken
before
magistrate
or justice.

* This clause would effect an important change. By the present law, speaking generally, a warrant granted in one county of England may not be executed in another county, except the same be first "backed," *i.e.* an authority endorsed thereon, authorizing its execution in the latter county, by a justice of the peace for such county.

There is no valid reason for this, which is a remnant of the local jealousies and exclusiveness prevailing in former times; and which have given rise to so much legal subtlety on the subject of *venue*.

PART II.

How warrant to be executed if accused already in custody, undergoing sentence.

147. If any person against whom any warrant is granted under the provisions hereof shall be already in custody, undergoing sentence for some offence other than that mentioned in such warrant, such warrant may be lodged with the keeper of the prison where such person is confined; and it shall be the duty of the keeper of the said prison upon the expiration or other determination of such sentence, upon being satisfied that the person so confined is the same person as the person named in such warrant, instead of discharging such person, to cause him to be taken before the magistrate or justice granting such warrant to answer the charge made against him, unless an order shall have been previously made by the High Court of Criminal Justice, or a Judge thereof, directing the earlier removal of the said accused, with a view to his being examined or tried upon the said charge.

A warrant granted in Ireland or Scotland may be executed in England or Wales.

No backing of any such warrant to be

148. Any warrant lawfully issued for the apprehension of any person accused of having committed any crime or offence against the laws of that part of the United Kingdom of Great Britain and Ireland called Ireland or Scotland respectively, may be executed in any part of England or Wales in which the accused may be or be found, by any constable or other officer of the peace whatever, whether holding such warrant or not, in the same way as though such warrant had been issued by a magistrate or justice acting in or for any county or place in England or Wales, where such accused shall be found or be apprehended; and no endorsement of such warrant or other authorization whatever, by any such magistrate or justice as

last mentioned, shall hereafter be necessary as a condition precedent to the lawful execution of such warrant in any part of England or Wales, any law or custom to the contrary notwithstanding.

PART II.
—
hereafter
necessary.

149. Any person apprehended under the provisions of the last preceding clause shall forthwith, with all convenient speed, be taken before the magistrate or justice issuing the said warrant, or some other magistrate or justice having jurisdiction to issue the same, or to deal with the accused thereunder; and such magistrate or justice, upon the accused being brought before him, shall proceed in the same manner as if the accused had been apprehended within the jurisdiction of the magistrate or justice who issued the said warrant.

Person ap-
prehended
there-
under to
be forth-
with taken
before
magistrate
issuing or
having
jurisdic-
tion to
issue
same.

150. Any warrant issued under the provisions hereof may be executed by any constable or officer of the peace holding the same, in any of the Isles of Man, Guernsey, Jersey, Alderney, or Sark; provided the same be first endorsed with an authority to execute the same within the jurisdiction of the justice or officer making such endorsement, by any justice or officer having jurisdiction to issue any warrant, or process in the nature of a warrant, for the apprehension of offenders within such jurisdiction, which authorization such justice or officer is hereby authorized and empowered to endorse.

Power to
execute
English
warrant
in the
Channel
Islands.

The term "justice or officer" in this clause means— in Jersey and Guernsey respectively, the bailiffs of Jersey and Guernsey respectively, or, in their respective absence, the lieutenant bailiffs of such islands respectively, within their several baili-

Definition
of "jus-
tice or
officer"
in this
clause.

PART II. wicks and jurisdictions; in Alderney, the Judge of Alderney, or, in his absence, any jurat of such island, within such island; and in Sark, the Seneschal of Sark, or, in his absence, his deputy, within such island.

Power to execute in England a warrant granted in the Channel Islands.

151. Any warrant, or process in the nature of a warrant, lawfully issued for the apprehension of any person accused of having committed any offence in any of the Isles of Man, Guernsey, Jersey, Alderney, or Sark, may be executed in any part of England and Wales; provided the same be first endorsed with an authority to execute the same within the jurisdiction of the magistrate or justice making such endorsement, by any magistrate or justice having jurisdiction to issue a warrant for any offence under the provisions hereof committed within such jurisdiction, which authorization such magistrate or justice is hereby authorized and empowered to endorse. Such warrant or process in the nature of a warrant, being so endorsed as aforesaid, may be executed by any person to whom such warrant or process is lawfully directed, or by any constable or other officer of the county or place within which such warrant or process shall be endorsed.

Form and effect of endorsement of warrant.

152. Any endorsement upon any warrant made under the provisions hereof may be in the form (H) in the Appendix hereto, and shall be signed by the person making the same. Such endorsement shall be a sufficient authority to any person to whom such warrant is addressed, or to all officers of the peace in the isle, county, or place where such endorsement is made, to execute the said warrant in such isle, county, or place.*

* As this Code proposes to repeal 11 & 12 Vict. c. 42, in its entirety, it

153. Any magistrate or justice may issue a warrant PART II.
 under his hand, directed to any constable or other Power to
 officer of the peace for the county or district in which issue a
 such magistrate or justice acts, either generally or by search-
 name, authorizing such constable or other peace officer warrant.
 to search any building, place, room, or thing what-
 soever within the county or district for which such
 magistrate or justice has jurisdiction, for anything
 on or in respect of which any offence, under the
 provisions of this Code punishable with death, penal
 servitude, or imprisonment with hard labour, has
 been or is reasonably believed to have been com-
 mitted, or which there is reasonable ground to
 believe is intended to be used for the purpose of
 committing or endeavouring to commit any such
 offence, or for anything whatsoever which may be
 given or received in evidence in support of any pro-
 secution for any such offence so punishable as afore-
 said, and to seize any such thing and convey the
 same before the magistrate or justice issuing such
 warrant, or some other magistrate or justice to be
 mentioned in such warrant, to be by him dealt with
 according to law. Such warrant may be in the Form of
 form (I) in the Appendix hereto, or as nearly so as search-
 circumstances will permit. warrant.

would be necessary to provide for the "backing" of Irish warrants in Scotland and Scotch warrants in Ireland, either expressly, or by leaving unrepealed the sections which provide for this. The practice of repealing Acts of Parliament in part is one of the chief causes of confusion in our law, and it is for that reason I have not followed the usual practice of proposing to repeal the Act in part, preferring to call attention to a provision which will have to be made if my proposal to repeal the entire statute should be accepted. The statute does not provide for the "backing" of Scotch or Irish warrants in the Channel Islands; nor for the "backing" of warrants granted in those islands in Scotland or Ireland, although making such provision in the case of England.

PART II.

No search-warrant to be issued except upon a sworn information. What facts such information must establish.

Form of information.

Only one entry and search to be made under warrant.

But a fresh search-warrant may be issued upon an information disclosing sufficient grounds.

154. No search-warrant under the provisions of this Code shall be issued except an information, in writing and on oath, is lodged before the magistrate or justice granting the same, satisfying such magistrate or justice (a) that an offence punishable under the provisions of this Code with death, penal servitude, or imprisonment with hard labour has been or is reasonably believed to have been committed; (b) that there is reasonable cause to believe that something on or in respect of which such offence has been or is reasonably believed to have been committed, or which there is reasonable ground to believe is intended to be used for the purpose of committing or endeavouring to commit any such offence, or something which may be given or received in evidence in support of a prosecution for such offence, is in the building, place, room, or thing proposed to be searched under such warrant; (c) that the granting of such warrant is indispensable for the purpose proposed. Such information may be in the form (J) in the Appendix hereto, or as nearly so as circumstances will permit.

155. It shall not be lawful to make more than one entry and search upon the same building, place, room, or thing under any warrant; but when any search-warrant has been executed, a fresh warrant may be issued, in form similar to the first, upon a fresh information in writing and on oath in accordance with the provisions hereof, and provided such information also satisfies the magistrate or justice applied to to issue the same that there is reasonable ground to believe that, notwithstanding the execu-

tion of the first warrant, the thing to be searched for exists, and is in the building, place, room, or thing proposed to be again searched. Such information may be in the form prescribed by the last preceding clause, with such additions as are by this clause prescribed.

PART II.

156. The magistrate or justice granting any search-warrant under the provisions hereof may, in his discretion, direct, by an endorsement in writing under his hand made upon such warrant, that such warrant be executed on any day (Sunday included) or at any hour, either by day or night; provided that no such warrant shall be executed on any Sunday, nor shall the same be executed on any week-day, except between the hours of sunrise and sunset, save and except the contrary be expressly authorized by an endorsement made in accordance with the provisions hereof. Such endorsement may be in the form (K) in the Appendix hereto, or to the like or similar effect.

Search-warrant may be authorized to be executed on any day and at any hour; but shall only be executed on a week-day, and between sunrise and sunset, unless expressly authorized. Form of endorsement.

157. Any warrant to apprehend any person, issued under the provisions hereof, may be issued or executed, either or both, on a Sunday as well as on any other day.

A warrant to apprehend may be issued or executed at any time.

158. Any warrant to apprehend any person, granted under the provisions of this Code, shall be and remain in force until it shall be duly executed in accordance with the provisions hereof.

And shall remain in force until executed.

159. No objection shall be taken or allowed to any information, warrant, or summons, for any alleged defect therein, either in substance or of form, or for

No objection to be allowed for any defect in

PART II. any variance between either of them and the evidence adduced at the hearing and examination of witnesses as hereinafter provided.

informa-
tion, war-
rant, or
summons.

A sum- 160. A summons granted under the provisions
mons may hereof may be served in any part of the United
be served Kingdom of Great Britain and Ireland, by any
in any constable or other officer of the peace.
part of the
United
Kingdom.

Service of 161. In any case where it shall be necessary to
summons, prove service of a summons, whether personal or
how to be otherwise, by any constable or other officer of the
proved. peace, an affidavit purporting to be made by the
constable or other officer of the peace serving the
same before, and to be signed by, any magistrate or
justice of the peace for any county or place within
the United Kingdom, shall be *primâ facie* good and
sufficient proof. Such affidavit shall be in one or
other of the forms (L or LL) in the Appendix hereto,
or as nearly so as circumstances will admit.*

Form of
affidavit of
service.

Magistrate 162. Any magistrate or justice shall have full
or justice power and authority to administer any oath or to
authorized take any affirmation required or prescribed to be
to ad- taken by the provisions of this Code.
minister
oath or
affirma-
tion.

Or take 163. Any affidavit or declaration in writing in any
affidavit proceeding under the provisions of this Code may
or declara- be made before any magistrate or justice, who is
tion.

* This clause is new. By the present law service can only be proved by the constable, or other officer who has served a summons, attending, personally, at the time and place appointed for the hearing of the summons, and giving oral evidence of having served the same. This practice is attended by both inconvenience and expense, and is wholly without any advantage to justify its retention.

hereby authorized to administer the oath to, or to take the affirmation of, any person. PART II.

164. Any person who is apprehended upon a warrant granted under the provisions hereof shall forthwith, and before any evidence is taken against him, be furnished with a copy of such warrant; and, subject to the proviso contained in the next succeeding clause, any person who is apprehended upon a warrant, or who appears in obedience to a summons issued under the provisions hereof, or any counsel or solicitor duly retained and authorized by him, shall be entitled to inspect, and, if he shall so require, to be furnished without charge with a copy of, any information upon which such warrant or summons was granted. Provided that no such inspection shall be allowed and no such copy shall be furnished in any case where the magistrate or justice granting such warrant or summons shall be of opinion that to permit such inspection to be had or such copy to be furnished would be prejudicial to the interests of public justice, and shall so certify in writing under his hand, unless the magistrate or justice signing such certificate, or any other magistrate or justice before whom the accused shall be brought or appear, shall otherwise direct and shall so certify in writing. Such certificates respectively shall be in the forms (M and MM) in the Appendix hereto. Provided that no investigation or proceeding under the provisions hereof shall be deemed to be invalid merely by reason of any refusal or omission to furnish to the accused person a copy of any warrant which has been granted against him, or to furnish a copy or to permit the

Person apprehended on warrant to be furnished with copy of warrant; and to be entitled to inspect and be furnished with copy of information.

No such inspection shall be had, or copy furnished, if magistrate or justice granting warrant so order, unless contrary directed subsequently.

Form of certificates under this clause.

No proceeding to be invalid by reason merely of any refusal or omission

PART II. inspection of any information upon which any warrant
to comply has been granted.*

with pro-
visions of
this
clause.

Every
accused
person to
be per-
mitted, at
all reason-
able times,
to confer
with coun-
sel or with
a solicitor
or his
authorized
clerk in
private.

165. Subject to any Rules of Court to be made, and for the time being in force, under the provisions hereof, every person who is accused of having committed any offence against this Code, and who is (a) apprehended either with or without warrant, (b) remanded in custody, or (c) committed to prison to await trial, shall be permitted, if he shall so desire, forthwith upon being so apprehended, and, if time will permit, before being brought up for inquiry or examination before any magistrate or justice, or during any interval of remand, and both before and after being conveyed to any place of detention to which he may be directed to be taken, or whilst in custody awaiting trial, at each and every of such periods, at all reasonable times and as often as he may reasonably require, to see and confer in private with any counsel or solicitor, or any clerk of such solicitor duly authorized for that purpose, and to give to such counsel, solicitor, or authorized clerk all such instruc-

* It is not the practice at present to furnish an accused person apprehended upon a warrant with any copy thereof. There is no reason for withholding this; and, having regard to analogy in other proceedings, it would seem to be in accordance with general principles that a copy of the warrant should be furnished, in order that an accused may see precisely upon what alleged charge his apprehension has been procured.

An inspection of the information is now only granted as a favour; and this indulgence is sometimes withheld entirely, upon the sole ground that it is not a matter of right, although the ends of justice might be promoted by its production. Subject to the express provisions contained in this clause, framed to provide against a miscarriage of justice by a premature disclosure of the information, *e.g.* where the information affects others not yet apprehended, no valid reason can, I think, be advanced against the provisions of this clause, which will be often found most important in favour of one innocently accused.

tions as may be necessary for his defence or in relation to his affairs; and shall be entitled to deliver personally to any counsel, solicitor, or the clerk of such solicitor authorized as aforesaid, any confidential written communications to serve as instructions for his defence or in relation to his affairs; and it shall not be lawful for any governor, officer, official, constable, or person whatsoever, other than such counsel, solicitor, or authorized clerk, to examine the contents of any such written document so delivered, or which is intended so to be.

PART II.

And to deliver personally to counsel or solicitor any written instructions; and same are not to be examined.

166. Whenever any person shall appear or be brought before any magistrate or justice charged with any offence against this Code committed within the jurisdiction of such magistrate or justice, and it shall be made to appear to such magistrate or justice that such person has, or is reasonably believed to have, committed any other offence against this Code in any other part of England or Wales, elsewhere than within his jurisdiction, such magistrate or justice may, if he be of opinion that the ends of justice will be thereby furthered, proceed to inquire into the said last-mentioned charge, and shall act in all respects as though such offence had been committed within his jurisdiction; and such magistrate or justice shall in such case, in relation to such offence, have and exercise in all respects the same jurisdiction and powers as are hereby given or required to be exercised in any case where the offence with which the accused is charged has been committed within the jurisdiction of such magistrate or justice.

Provision where accused apprehended on a warrant, and further accused of another offence committed out of the jurisdiction of magistrate or justice before whom he is brought.

PART II.

Power to
magistrate
or justice
to grant
summons
to compel
attend-
ance of
witness, or
production
of docu-
ments, etc.

167. If, either before or after the apprehension of, or the granting of any warrant or summons against, any accused person, it shall be made to appear to the reasonable satisfaction of any magistrate or justice of the peace that any person is able to give material evidence, or to produce any documentary evidence or other material thing, against any person alleged to have committed any offence against this Code, and that such person will not voluntarily appear for the purpose of deposing to an information or producing any documentary evidence or other material thing, with a view to a summons or warrant being obtained; or for the purpose of being examined as a witness or producing any documentary evidence or other material thing either on behalf of the prosecution or for the defence; such magistrate or justice may, and he is hereby required to, issue a summons directed to such person commanding him to be and appear, or to appear and produce any documentary or other evidence, or other material thing to be specified in such summons, in his custody, possession, or power, at a time and place to be mentioned in such summons, before the said magistrate or justice, or some other magistrate or justice having the same jurisdiction as may then be there. Every such summons shall be under the hand of the said magistrate or justice, and shall be in the form (N) in the Appendix hereto, or some other like or similar form.*

* This clause is framed with a view to remedy several defects in the existing law. Not the least important of these is the absence of any power vested in a magistrate or justice to compel the attendance of any person as a witness prior to a summons or warrant being issued; and yet it may be, and often is, indispensable to the obtaining of a warrant to secure the attendance of some person who will not attend voluntarily, or to obtain the

168. Any summons issued under the last preceding clause shall be served, either personally or otherwise, in the manner hereby provided in the case of a summons issued against any person accused of having committed an offence against this Code, and all and several the provisions hereinbefore contained in reference to the service of a summons in any part of the United Kingdom, and proof of such service, shall be deemed equally to apply and extend to a summons to compel the attendance of, or production by, a witness issued under the authority of the last preceding clause.

PART II.

Service of
summons
on wit-
ness.

169. If any person served with a summons to attend and give evidence, or to attend and produce, does not reside or is not within the jurisdiction of the magistrate or justice issuing the same, a reasonable sum shall be paid to the person so summoned, at the time of the service of the summons, to cover his costs and expenses in attending in obedience to such summons.

Reason-
able
conduct
money to
be paid
where
witness
out of
juris-
diction.

170. If any person who has been duly served, either personally or otherwise, with any summons to attend and give evidence, or to attend and produce, in accordance with the provisions hereof, shall fail to attend in obedience thereto at the time and place therein mentioned, and no just cause of excuse shall be given for such failure, neglect, or refusal, upon

If witness
served
with sum-
mons wil-
fully dis-
obeys
same, war-
rant may
issue upon
proof of
certain re-
quisites.

production of books or documents. These objects can only be now obtained by issuing a Crown Office subpoena—an unsatisfactory process, since, if disobeyed, the magistrate or justice has no summary power to compel attendance, as in the case of disobedience of his own summons, and the witness can only be proceeded against by the expensive and dilatory process of indictment or attachment.

PART II. proof being made to the satisfaction of the magistrate or justice before whom such person should have attended or produced as aforesaid, (a) of the due service of the summons, either personally or otherwise, as hereby provided; (b) (when required to be done by this Code) that a reasonable sum was paid or left with such summons to cover the cost and expenses of the attendance of the person summoned; (c) that such summons is reasonably believed to have come to the knowledge of the person summoned; (d) that such person wilfully disobeys the same; such magistrate or justice may issue a warrant to bring and have such person, at a time and place to be therein mentioned, before the magistrate or justice who issues such warrant, or before some other magistrate or justice having the same jurisdiction, to testify or produce as aforesaid.

Form of
warrant in
case of
wilful dis-
obedience
of sum-
mons by
witness.

171. Such warrant shall be under the hand of the magistrate or justice issuing the same, and may be in the form (O) in the Appendix hereto, or some other like or similar form, and may be executed in any part of the United Kingdom by any constable or other officer of the peace holding the same; and no endorsement authorizing the execution of such warrant, by any other magistrate or justice, shall be required as a condition precedent to the execution thereof in any part of the United Kingdom.

Provision
as to exe-
cution of
same.

172. Provided, however, that when such warrant can be executed so that the person named therein can be taken then and there before the magistrate or justice issuing the same, or some other magistrate or

justice having the same jurisdiction, such warrant shall be executed accordingly and not otherwise. PART II.

173. Upon such person being brought before any such magistrate or justice, and required to give evidence or to produce anything for or against any person accused of any offence against this Code in respect of which such person has been apprehended and brought or has appeared before any magistrate or justice, he shall, if the presence of the accused can be conveniently had, and it is otherwise for the interests of justice so to do, proceed to take the evidence of such person; or if the presence of the accused cannot be then conveniently had, or it is for any other reason in the interests of justice so to do, such magistrate or justice may defer taking the evidence of the said person until some future day, not being distant more than seven clear days, and may require the said person to enter into a recognizance, either with or without a surety or sureties, conditioned for his appearance on a day to be named, not being later than seven clear days, to give evidence or produce, or to give evidence and produce, any book, document, or thing whatsoever in his custody, possession, or control, relating to the charge under investigation, which he may be lawfully required to produce; and in default such magistrate or justice may, by warrant under his hand, commit such person to any prison to which persons guilty of contempt of Court may be by law committed,* for any period not exceeding seven clear days, upon the expiration of such period to be

Course to be pursued when contumacious witness, required to give evidence against an accused who has been examined, is brought up on warrant.

* By 11 & 12 Vict. c. 42, s. 16, a refractory witness may be committed to the common gaol or house of correction. This is beyond what the occasion calls for.

PART II. brought before such magistrate or justice, or some other magistrate or justice having the like jurisdiction.

Course to
be pursued
when con-
tumacious
person, re-
quired to
lay an in-
formation
with a
warrant or
summons,
is brought
up on
warrant.

174. If the attendance of any person, against whom a warrant has been issued under clause 170 for wilful disobedience of a summons to appear before a magistrate or justice, is required for the purpose of laying an information, or producing any book, document, or thing whatsoever in his custody, possession, or power, with a view in either case to an application that a warrant or summons may be issued against any person for any offence against this Code, such person shall, upon being brought before a magistrate or justice under such warrant, in the discretion of such magistrate or justice, be required either then and there to lay such information, so far as his knowledge of the facts in relation to the offence of which such person is accused extends, or to produce whatever is in his custody, possession, or power in relation to such offence as he is lawfully required to produce; or, if it is for any reason in the interests of justice, he may be required to enter into a recognizance, either with or without a surety or sureties, conditioned for his appearance on some subsequent day to be named, not being later than three clear days, to depose to such information according to his knowledge, or to produce, or to depose as aforesaid and produce whatever is lawfully required of him; and in default may be committed, by warrant under the hand of such magistrate or justice, to any prison to which persons guilty of contempt of Court may be by law committed, for any period not exceeding three clear days, upon the expiration of such period

to be brought before such magistrate or justice, or some other magistrate or justice having the like jurisdiction. PART II.

175. If any person who has been served with a summons to attend and lay an information, or give evidence, or to attend and produce, under any of the provisions hereof, attends before a magistrate or justice in obedience thereto; or if any person is brought before any magistrate or justice upon a warrant or commitment under the provisions of either of the last preceding clauses, or appears upon recognizance; and, in either of the said cases, such person refuses to be examined on oath or affirmation, or refuses to take such oath or affirmation, or, having taken the same, wilfully refuses to answer any question that is lawfully put to him, or to produce anything which is in his custody, possession, or power, and which he has been duly summoned, and is lawfully required to produce, or to sign any deposition which he is required to sign under any of the provisions hereof, without, in either of the said cases, offering any reasonable excuse for such refusal; the magistrate or justice then present and having jurisdiction in the matter may, by warrant, commit such person to any prison to which persons guilty of contempt of Court may be lawfully committed, there to be detained for such period as such magistrate or justice shall direct, or until he shall consent to be examined on oath or affirmation and to make answer to such questions as may be lawfully put to him, and to produce anything in his custody, possession, or power, which he has been duly summoned and

Witness
refusing
to be
examined,
or produce,
or to take
oath or
affirma-
tion, may
be com-
mitted.

PART II. is lawfully required to produce, or to sign such deposition, as the case may be.

Witnesses
may be
ordered
out of
Court.

176. Upon any inquiry before a magistrate or justice, it shall be lawful for either the prosecutor or the accused to apply to such magistrate or justice to order that the witnesses on both sides leave and remain out of Court, each until he is called upon to give evidence; and thereupon such magistrate or justice shall be at liberty to make an order accordingly, and such order shall be obeyed by the said witnesses on either side. Nothing in this Code contained shall be deemed to extend to or authorize any magistrate or justice to order any accused person to be or remain out of Court during any portion of any inquiry affecting or relating to such accused, notwithstanding that he may, or is proposed to, be examined on his own behalf or otherwise.

Power of
ordering
witnesses
out of
Court not
to extend
to order-
ing out of
Court any
accused
person.

Prelimi-
nary
inquiry
before
magistrate
or justice.

177. Whenever any person shall be brought or shall appear before any magistrate or justice under the provisions hereof, such magistrate or justice shall, in the presence and hearing of the accused, proceed to hear the statement on oath or affirmation, according to the provisions hereof, of any person able to depose to anything material and relevant; and such oath or affirmation shall be taken before the commencement of the examination of any witness. The magistrate or justice shall cause the statement of any person so called to be reduced into writing by the clerk to the magistrate or justice as the witness proceeds, and as nearly as may be in the actual words used by the witness; or may cause such statement to be taken *verbatim*, question and answer, in

Examina-
tion of
witnesses
to be taken
in writing.

Or may
be taken
by official

shorthand by an official shorthand writer appointed under the provisions of this Code; and the shorthand notes so taken shall be duly transcribed as herein-after provided. Every such shorthand writer shall first be duly sworn or make affirmation well and faithfully to perform the duties devolving upon him.

PART II.
shorthand
writer.

178. The magistrate or justice, or, by his direction, the clerk to such magistrate or justice, or if counsel or solicitor appear to conduct the prosecution, the counsel or solicitor so appearing, during the examination in chief of any witness, may put to such witness any question, in accordance with the rules of evidence, necessary to elicit clearly the whole knowledge of the witness in reference to the subject matter under investigation.

Who to
examine
witness
for the
prosecu-
tion in
chief.

179. Every witness examined under the provisions hereof shall, at the commencement of such examination, specify his full proper names, address, and occupation or description, and the same shall be reduced into writing and form part of the statement of the witness.

Every
witness
examined
to specify
his names,
address,
and occu-
pation.

180. Upon any accused person being brought or appearing before any magistrate or justice charged with any offence against this Code, he shall be entitled to be represented at every stage of the proceedings by counsel or solicitor, who shall have the right to be present throughout the proceedings. The accused himself, or if he shall be represented by counsel or solicitor, his counsel or solicitor, shall be entitled to cross-examine every witness who is called for the prosecution. If more than one person is jointly accused, each of the accused, or if they are

Accused
entitled to
be repre-
sented by
counsel or
solicitor.

Accused,
or his
counsel or
solicitor
entitled
to cross-
examine
witnesses

PART II.
for the
prosecu-
tion.

Cross-ex-
amination
to be taken
down in
writing or
by official
shorthand
writer.

separately represented by counsel or solicitor, the counsel or solicitor of each, in turn, shall be entitled to cross-examine the witnesses for the prosecution. The magistrate or justice shall cause the evidence of every witness whilst under cross-examination to be reduced into writing, or may order the same to be taken in shorthand and transcribed, in the same manner in all respects as is hereby provided in the case of the evidence in chief.

Who to
re-
examine
witnesses
for prose-
cution.

181. The magistrate or justice, or, by his direction, the clerk to such magistrate or justice, or the counsel or solicitor appearing to conduct the prosecution (if any), may at the close of the cross-examination of any witness, subject to the rules of evidence, put any further question to the witness relating to the offence being inquired into, or rendered necessary and admissible by any question put or answer given in the course of the cross-examination, and the evidence given by the witness upon such re-examination shall be reduced into writing, or taken down in shorthand and transcribed, in the same manner as is hereinbefore provided.

At close
of every
examina-
tion of
witness,
evidence
to be read
over to
witness,
who is to
be at
liberty to
correct,
alter, or
add to
same.

182. At the close of every examination in chief, cross-examination, and re-examination respectively of any witness taken under the provisions hereof, the magistrate or justice before whom the same is taken shall cause the evidence so taken to be read over in his presence and in the presence and hearing of the witness giving the same, and of the accused; and the witness shall thereupon be at liberty to make any correction or alteration thereof, or addition thereto, that he may desire.

183. After any part of the evidence of any witness has been reduced into writing, and has been read over to him in accordance with the provisions contained in the preceding clauses, such witness shall sign such part, or, if he be unable to write, shall affix his mark thereto.

PART II.

Witness to
sign same.

184. Whenever the evidence of any witness has been taken in shorthand under the provisions of the said clauses, such evidence shall, as soon as conveniently may be, be transcribed into writing by the person taking down the same (or if he shall die or be incapacitated, by some other official shorthand writer appointed under the provisions of this Code); and such transcript shall be read over in the presence and hearing of the magistrate or justice before whom the evidence shall have been taken, or such other magistrate or justice having the same jurisdiction before whom the accused shall be brought or appear, and of the witness whose evidence is transcribed, and of the accused, and the witness shall thereupon be at liberty to make any correction or alteration thereof, or addition thereto, that he may desire, and shall sign the same, or, if he be unable to write, shall affix his mark thereto.

Evidence
taken in
shorthand
to be tran-
scribed,
and tran-
script to be
read over
to witness,
who is to
be at
liberty to
correct,
alter, or
add to
same.

185. If any correction, alteration, or addition made by any witness upon his evidence being read over to him, whether the same shall have been at once reduced into writing, or taken in shorthand and transcribed under the provisions hereof, shall, in the opinion of the magistrate or justice before whom the same is read over, be the result merely of clerical error, the evidence may be corrected at the place

Correc-
tions,
altera-
tions, or
additions,
how to be
made.

PART II. where such error occurs ; but otherwise any correction or alteration of, or addition to, his evidence made by any witness shall be reduced into writing separately, as an addend to and at the end of the evidence of the witness previously taken down or transcribed. Such addend shall be signed or marked by the witness.

Magistrate or justice to sign statement of witness. 186. The statement of every witness, taken under the provisions hereof, shall be signed at the foot by the magistrate or justice before whom the same is read over, after having been signed or marked by the witness.

Deposition, definition of. 187. The evidence of any witness taken and reduced into writing, or transcribed from shorthand notes, in accordance with the provisions hereof, and read over to and signed (or in the case of a witness not being able to write, marked) by such witness, and signed by the magistrate or justice before whom the same was read over and signed, shall be and be called the “ deposition ” of such witness ; and the expression “ deposition,” whenever contained herein, shall mean the evidence of a witness taken, read over, and signed or marked by the witness, and signed by a magistrate or justice in conformity with the several provisions of this Code in that behalf.

Accused competent and compellable to be examined in preliminary investigation. 188. In any preliminary investigation before a magistrate or justice under the provisions hereof, every accused person shall be competent and compellable to be examined in the same manner (subject as hereinafter provided) as any ordinary person, either by or on behalf of the prosecution, or in his

own behalf, or on behalf of any person jointly accused with him.* PART II.

189. Whenever any such accused person is examined on behalf of the prosecution, such examination shall be conducted by the magistrate or justice, or, by his direction, by the clerk to such magistrate or justice, or by the counsel or solicitor appearing and conducting the case for the prosecution (if any). Whenever any such accused person is examined, whether by or on behalf of the prosecution, or on his own behalf, or on behalf of any person jointly accused with him, no oath or affirmation in lieu thereof shall be administered to or be taken by any such accused person; it shall not be lawful, in either of the said cases, to put to any such accused person any question with a view of impeaching his credit generally; but the questions put shall, in either of the said cases, be such only as may be reasonably calculated to elicit the whole knowledge of the accused person in relation to the particular offence with which such accused, or any other person jointly accused with him, is charged, and which is then the subject matter of investigation. It shall be the express duty of any magistrate or justice before whom any such accused person is examined, to protect such accused from any examination, and to prevent any question being put or answered which is either prohibited or which is not expressly authorized by the provisions of this Code. It shall further be the duty of such magistrate or justice to direct the attention of any accused who is

By whom such investigation to be conducted.

No oath to be administered to an accused.

What questions may be put.

Magistrate or justice to protect accused from unauthorized questions.

* This is an entire innovation upon the present law. For the grounds upon which it is proposed and justified, see Preface, pp. xlii.—lx.

PART II. not represented by counsel or solicitor, or if there be more than one person jointly accused, of each of them in turn who is not so represented, to any matter in relation to the evidence given against him or them, or to any statement made by either of them in the course of or subsequent to the examination of either of them requiring explanation, or which appears to tell against such accused or either of them, and to invite the accused or either of them, each in turn, to make any statement or explanation he may desire in reference thereto.

At what period an accused may be examined.

190. After the depositions of the several witnesses examined against any accused person have been taken in accordance with the provisions hereof (or at such earlier stage of the investigation as to any magistrate or justice before whom such accused shall be brought or appear, in the discretion of such magistrate or justice, shall seem best calculated to further the ends of justice), it shall be lawful for any magistrate or justice before whom any person shall be brought or appear charged with any offence against this Code, in his discretion, to take the examination of such accused person (or if there be more than one person jointly accused, to take the examination of the several persons so accused, in the presence and hearing of each other) touching his or their several knowledge of the said offence; and, save as herein provided, such examination shall be conducted, and shall be reduced into writing or taken down in shorthand and transcribed, in the same manner and subject to the same rules, and shall be subject to all and several the pro-

Examination to be reduced into writing or taken down by shorthand writer.

visions, provided and enacted in the case of ordinary witnesses, so far as the same apply and are not inconsistent with any express provision herein contained.

PART II.

191. Any accused person so examined shall at the close of the examination be informed, by the magistrate or justice by or before whom the same is taken, that he is at liberty, and that it is his right, to add thereto any further statement or explanation touching the offence with which he is charged, or any answer he has given or statement he has made in his examination, that he may desire; or if any accused person be represented by counsel or solicitor, such counsel or solicitor shall be entitled, at the close of such examination, to put any question to such accused person having relation to the matters under investigation, or to any answer given by the accused or statement made by him in the course of his examination.

At close of examination in chief of accused, what accused to be informed of.

Accused may be examined by his counsel or solicitor.

192. In any case in which two or more persons are jointly accused, and are brought or appear together before any magistrate or justice, each of such accused as is not represented by counsel or solicitor shall in turn be informed by such magistrate or justice that he is entitled, and that it is his right, to put to the accused who has been examined as aforesaid, at the close of such accused person's examination, any question he may desire, having relation to the matters under investigation, or to any answer given or statement made by such last-mentioned person in the course of or subsequent to his examination.

Examination of accused where two or more jointly charged.

193. Any statement made by any accused person

Examina-

PART II. whilst under examination or otherwise, whether such
tion of
accused to
be read
over to
and signed
by him
and by
magistrate
or justice. accused be examined by the prosecution, or on his own
 behalf, or on behalf of any person jointly accused
 with him, under the provisions hereof, having been
 reduced into writing or transcribed as aforesaid,
 shall be read over to the person making the same
 (and if there be two or more persons jointly charged,
 and brought or appearing together before any
 magistrate or justice, in the presence and hearing
 of the other accused) in the presence of the magis-
 trate or justice before whom the same is taken, or
 some other magistrate or justice having the same
 jurisdiction before whom the accused shall be brought
 or appear, and shall be signed or marked by the
 person making the same, and shall be signed by
 such magistrate or justice in the same manner,
 and shall be subject to the same provisions in all
 respects as are hereby enacted in the case of the
 evidence of any witness; and when reduced into
 writing, read over, and signed or marked by the
 person making the same, and signed by the magis-
 trate or justice, shall form and be part of the
 "depositions" in the case. The term "deposition"
 shall include any statement made and taken in
 accordance with the provisions of this clause.

The term
 "deposi-
 tion" in-
 cludes the
 exami-
 nation of
 accused.

Examina-
 tion of
 accused
 deemed
 part of
 evidence
 in case.

194. The statement of any accused person, taken
 under the provisions hereof, shall be deemed to be
 part of the evidence in the case in which such
 statement is taken.

Definition
 of "deposi-
 tion of the
 accused."

195. The expression "deposition of the accused,"
 whenever contained herein, shall mean the statement
 of an accused person taken, read over, and signed or

marked by the accused, and signed by the magistrate or justice before whom the same was read over and signed or marked, in conformity with the several provisions of this Code in that behalf. PART II.

196. Any magistrate or justice, before whom any person shall be brought or appear charged with any offence against this Code, may, at any stage of the inquiry, call as a witness and take the deposition of any person who is able to give any material evidence, as in his discretion he shall think most conducive to the interests of justice, and whether or not such person is proposed or intended to be called as a witness by any or either party to any such inquiry. Such magistrate or justice may put any question relevant to the inquiry to any witness called on either side at any time and at any stage of such inquiry. Magistrate or justice may take the evidence of any person whether or not proposed to be called by either side.

197. Any person charged before any magistrate or justice with having committed any offence against this Code may be remanded, from time to time, by any magistrate or justice having jurisdiction to take the examination of witnesses in relation to such offence under the provisions hereof, subject to the following provisions, viz. : When and for what period an accused may be remanded.

(a) No accused person shall be remanded unless and until such evidence has been adduced against the accused as shall establish a reasonable presumption that such accused has committed an offence against this Code.

(b) If, upon the first occasion when such accused is brought before any magistrate

PART II.

or justice, it shall be necessary or advisable, for any reasonable cause, to defer the examination of witnesses, it shall be lawful, if the magistrate or justice before whom such accused is brought shall think fit, in every case in which any information or deposition in writing and upon oath has been made affecting such accused person, to cause such information or deposition to be read in the presence and hearing of the accused; and if, in the opinion of the magistrate or justice before whom the accused is brought, such information or deposition shall establish a reasonable presumption that such accused has committed an offence against this Code, such magistrate or justice may thereupon remand such accused person to a future day to be named.

(c) No accused person shall be remanded for any longer period than eight clear days at any one time, except upon his own application, made personally, or made with the consent of such accused person, and in his presence, by his counsel or solicitor, in which case the remand may be for such period as the magistrate or justice before whom such accused is brought or appears under the provisions hereof shall think reasonable and necessary, not exceeding, however, at any one time the space of four weeks.

(d) No accused person shall be remanded un-

reasonably, nor shall any such person be remanded any greater number of times than is reasonably necessary for properly carrying out the provisions of this Code.*

PART II.

198. Any magistrate or justice who has remanded any accused person may, if it shall be necessary so to do, by warrant under his hand, order such accused, if in custody, to be brought before him at any time before the expiration of the period for which such accused has been remanded; and the keeper of the prison or other person in whose custody such accused is shall obey such warrant.

Accused may, if necessary, be ordered to be brought up before the expiration of the period for which he is remanded.

199. Subject to any Rules of Court to be made and, for the time being, in force under the provisions hereof, any counsel or solicitor, whether appearing for the prosecution or for any accused person, and who is duly authorized in that behalf, shall be entitled, in the interval of any remand, at all convenient times, to peruse the depositions taken in the case; and every prosecutor or accused person shall be entitled, pending any such remand, if he shall so desire, to be furnished with a copy of the depositions so taken in the case, by the officer or person having the custody of the same,

Inspection and copy of depositions pending remand.

* At present no accused, although with his own express consent, nay, even at his own desire, in cases where it is indispensable for the purposes of his defence, can be remanded in custody for any greater period than eight days. To meet this difficulty *formal* remands are granted from week to week, which entail wholly unnecessary trouble and expense to all concerned. The above clause has been framed so as to provide, on the one hand, against an accused, and presumably innocent, person being harassed by vexatious remands, and on the other to enable a magistrate or justice, with the consent or at the request of an accused, to grant a remand for such period as may be necessary for the production of evidence, either for the prosecution or defence, without resorting to the device of formal remands, inconvenient to all concerned, for the accomplishment of the same object.

PART II. upon payment of a reasonable sum, not exceeding the sum of twopence for every folio of ninety words.*

In what cases an accused is entitled to bail as of right.

200. Every person brought or appearing before any magistrate or justice of the peace, or before any Court having jurisdiction under the provisions hereof, charged with any offence for which, upon a first conviction, an offender is not liable to be sentenced to death or penal servitude, shall be entitled to be admitted to bail at every stage of the proceedings, either in his own recognizance only, or upon entering into his own recognizance and procuring one or more surety or sureties to become bound for his appearance in such reasonable amount as such magistrate or justice, or such Court, having regard to all the circumstances of the case, may fix.†

In what cases bail is discretionary.

201. Every person brought or appearing before any magistrate or justice of the peace, or before any

* Under the present law and practice, a copy of the depositions cannot be required until the whole of the examinations before the magistrate or justice have been concluded (*vide* 11 & 12 Vict. c. 42, s. 17; *Reg. v. Lord Mayor of London*, 5 Q. B. 555; and *Ex parte Fletcher*, 13 L. J., 67 M. C.). It will frequently happen that a prosecutor or an accused is not professionally represented at the first examination, and that counsel or solicitor is instructed at some later stage. In that case, although, as a matter of courtesy, an inspection of the depositions is allowed, or the evidence which has been taken is read over by the clerk, this is not a matter of right; and a copy of the depositions is frequently refused altogether. In cases where, as a matter of favour, a copy of the depositions is furnished during remand, a much larger charge is exacted than that prescribed by statute to be paid after committal.

† This is an extension of the existing law *in favorem libertatis*. At present a magistrate or justice has an absolute discretion to accept or refuse bail in every case of felony, and in the case also of a large number of misdemeanours (*vide* 11 & 12 Vict. c. 42, s. 23). In the case of certain other misdemeanours, he is obliged to take bail if he commit for trial. A person accused of treason can only be admitted to bail by order of a Secretary of State, or the Queen's Bench Division of the High Court of Justice, or a Judge (if the application be made in vacation).

Court having jurisdiction under the provisions here-
of, charged with any offence upon which he may be
sentenced, upon a first conviction, to death or penal
servitude, may, in the discretion of such magistrate or
justice, or of such Court, be admitted to bail at any or
every stage of the proceedings, upon entering into
his own recognizance and procuring one or more
surety or sureties to become bound for his appear-
ance in such amount as such magistrate or justice
or such Court, having regard to all the circumstances
of the case, shall fix.

PART II.
—

202. No objection shall be allowed to any person
offering himself as a surety by reason only that
he is not a householder; but, if otherwise respon-
sible, such person shall nevertheless be accepted as
surety.*

Surety not
to be re-
fused only
by reason
that he is
not a
house-
holder.

203. It shall not be lawful for any magistrate or
justice, in any case in which he shall fix the amount
of bail or the number of sureties to be given by an
accused, to fix the same at an excessive or unreason-
able amount or number.†

Excessive
bail
illegal.

204. It shall not be lawful for any magistrate or
justice, or for any constable or other officer of the
peace, or other person, to dissuade or hinder, or
endeavour to dissuade or hinder, any person from

A pro-
posed
surety
may not
be dis-
suaded or
hindered.

* This clause proposes to make the practice uniform. At present the more general practice is to refuse to accept as surety any person not being a householder, although there is no imperative rule upon the subject. It is obvious that many persons, not being householders, nevertheless present guarantees of an equally substantial character; and it is submitted that a person, otherwise admitted to be sufficiently responsible, ought not to be rejected solely because he may not be a householder.

† This is substantially in accordance with a provision contained in the Bill of Rights (1 Will. & Mary, s. 2, c. 2).

PART II. becoming a surety for any accused person, if he shall so desire to do.*

Course to
be pursued
where
accused
not at once
prepared
with bail.

205. If any magistrate or justice shall, in any case, consent to accept, and shall fix the bail to be given by any accused person, conditioned for his appearance at any time and place, and such accused shall not be then prepared with the required surety or sureties, and shall in consequence be taken to any prison or place of detention; or if, after any accused person shall have been remanded in custody or committed for trial without bail as hereinafter mentioned, any magistrate or justice, having jurisdiction so to do, shall consent to accept, and shall fix the amount of bail to be given by such accused, conditioned as aforesaid; such magistrate or justice shall, in the first of such cases, upon the warrant of commitment authorizing the reception and detention of such accused, cause to be written a certificate notifying the bail which he has consented to take; and in the second of such cases shall make out, or cause to be made out, and shall transmit to the governor of the gaol where such accused shall be detained, a certificate notifying that he has consented to take bail, and the amount and other conditions thereof. Such certificates respectively shall be in the forms (P and PP) in the Appendix hereto, or some other like or similar form, and shall in each case be signed by such magistrate or justice.

Where
sureties
may enter

206. Upon such certificate as aforesaid being given, the accused to whom the same applies, if he

* This clause is merely declaratory of the common law of England upon the subject. *Vide* Reg. v. Saunders, 2 Cox, C. C. 249.

has then been committed for trial, may, at any time before the first day of the assizes, sittings, or session at which he is appointed to be tried, or before the day to which any such sittings or session may be adjourned, or if he has been remanded, at any time before the day to which he is remanded, be admitted to bail, upon finding sureties to the number and severally responsible for, and entering into his own recognizance in, the sum fixed; and such bail may be taken either by the accused (who may be brought up for that purpose) and his surety or sureties entering into recognizances in the amount fixed before the magistrate or justice who has consented to accept and has fixed the bail to be given, or before any other magistrate or justice having the same jurisdiction; and in either case, if the accused shall not be brought up to enter into his personal recognizance, the magistrate or justice before whom such surety or sureties enter into such recognizance for his appearance shall forthwith thereupon transmit to the governor or keeper of the prison where the accused for whose appearance bail has been so given is detained, a certificate under his hand certifying the fact. Such certificate shall be in the form (^P/_{PP}) in the Appendix hereto, or some other like or similar form. Or, if it shall be more convenient and expeditious, such surety or sureties and the accused (all or either) may enter into the required recognizance before any justice attending or being at the gaol where such accused person is detained.

PART II.
—
into recog-
nizances
in that
case.

207. Upon the required surety or sureties duly becoming bound as aforesaid, and the accused

Accused
to be dis-
charged

PART II. entering into his personal recognizance in the amount fixed for that purpose, such accused shall be forthwith discharged from custody as to the offence in respect of which such bail is given.

Omission to sign or transmit certificate of acceptance of bail not to affect right of accused to be bailed.

208. Any omission or neglect on the part of a magistrate or justice to make out and sign any certificate which he is hereby required to make out and sign, or to transmit the same as hereby provided, shall not affect the right of any accused person to be admitted to bail, if such accused is remanded or committed for trial charged with any offence in any case in which an accused is, under the provisions of this Code, entitled to bail as of right; but in any such case such accused may apply to any one of the visiting justices of the gaol in which he is detained, or to any other magistrate or justice for the same county, who shall, upon being satisfied that the offence for which the accused is detained is such as to entitle him to be admitted to bail as of right, admit him to bail accordingly, and upon such bail being given, the accused shall be released from custody as to such offence.

How bail may be given, when sureties cannot attend before the magistrate or justice fixing same, or at place where accused detained.

209. In any case in which any magistrate or justice has consented to admit an accused to bail, and has fixed the amount thereof, if it shall be inconvenient for the sureties or either of them, from any reasonably sufficient cause, to attend either before the magistrate or justice who has fixed such bail, or some other magistrate or justice having the same jurisdiction, or at the gaol where the accused is detained, it shall be lawful for any such surety (upon production to any magistrate or justice acting for any county or district in the United Kingdom of

Great Britain and Ireland of a duplicate of the certificate certifying that such accused person is entitled to be admitted to bail and the amount thereof, and which duplicate certificate shall be made out and delivered upon application made by or on behalf of any such accused, and upon such magistrate or justice being satisfied of the sufficiency of the proposed surety, and that there is reasonably sufficient cause for such surety attending and giving bail before him) to enter into a recognizance in the sum required before such magistrate or justice; and such magistrate or justice shall, upon the recognizance being so entered into, forthwith transmit the same to the magistrate or justice who has consented to admit the accused to bail, and shall likewise forthwith transmit a duplicate of such recognizance, together with the duplicate certificate produced to him as aforesaid, to the keeper of the gaol where such accused person is detained; and the production to any justice attending or being at such prison, or to the magistrate or justice who has fixed the bail to be given by such accused, or any other magistrate or justice having the same jurisdiction, of such duplicate recognizance shall be deemed to be for all purposes the same, and as effectual in all respects, as though the person who has entered into the same had attended and entered into the recognizance personally before either of such last-mentioned magistrates or justices.*

* This clause is an extension of the present law. 11 & 12 Vict. c. 42, s. 23, enacts that any justice committing any person for trial, and consenting to admit him to bail, may endorse a certificate of such consent upon the warrant of commitment. The sureties may then attend at the gaol where the accused is, and enter into recognizances before any justice attending or being at the gaol; or, if it be inconvenient for any surety to attend and enter into the recognizance at the gaol, the same may be

PART II.

Provision
for trans-
mission of
recogni-
zances
where
same not
entered
into before
the magis-
trate or
justice re-
manding
or com-
mitting
accused
for trial.

210. Whenever, under any provision of this Code, any accused is committed to prison pending remand or trial, and he or any surety or sureties subsequently enter into a recognizance, conditioned for the appearance of such accused upon such remand or to take his trial elsewhere than before the magistrate or justice by whom, or at the Court whence, such accused was remanded or committed for trial, every such recognizance shall be forthwith transmitted by any magistrate or justice before whom the same is entered into to the magistrate or justice by whom such accused was remanded or committed for trial, to be by him dealt with as provided by this Code.

entered into before any justice of the peace for the same county, and transmitted to the keeper of the gaol, upon which any justice attending or being at the gaol is authorized to take the recognizance of the accused, and then to order him to be discharged from custody. There is, however, no provision to meet the case of major inconvenience, where the sureties reside in another part of the country; and in such a case two distinct hardships are inflicted. One is that the sureties are compelled to travel an often considerable distance, and even when they have done this they are probably personally unknown in the district where the bail is to be taken, and a delay more or less great takes place whilst inquiry is being made as to their identity and responsibility, and during which the accused is, of course, kept in custody.

This state of the law places formidable obstacles in the way of an accused, who may even afterwards turn out to be entirely innocent, procuring bail when he is charged with an offence at a distance from his home and friends. It having been conceded that the convenience of sureties is to be considered where it is only a question of their attending at a comparatively short distance from their home, and special legislative enactment having been made in their favour, *à fortiori* should similar provision be made in the case of those resident at a much greater distance. The above clause is framed in entire accordance with the principles upon which the section referred to was passed, except that it gives power to justices of another county to perform what is little more than a ministerial act, viz. to allow a recognizance to be formally entered into before them in a case investigated before a magistrate or justice in another county, the essential conditions of the recognizance, however, having been previously fixed by the latter.

211. Any accused person remanded under the provisions hereof, and who is not released on bail, shall, subject to any provisions in this Code contained, during the interval between any remand (or in any case in which the magistrate or justice consents to take bail, until such bail shall be duly given), be conveyed to and detained in the place by law provided for the detention of accused persons pending remand or trial within the jurisdiction of the magistrate or justice remanding such accused.

PART II.
Accused
not bailed,
how to be
dealt with.

212. Upon any magistrate or justice remanding an accused person to any place by law provided for the detention of accused persons pending any preliminary investigation, under the provisions of the last preceding clause, such magistrate or justice shall cause to be made out a warrant in the form (Q) in the Appendix hereto, and such warrant shall be under the hand of such magistrate or justice. Such warrant under the hand of such magistrate shall be a full and sufficient authority in law to the persons to whom the same is addressed respectively, and they are hereby severally required to observe and obey the directions in such warrant contained, and on the part of each to be observed and performed.

Warrant
to be made
out when
an accused
remanded
in custody.

Form and
effect of
warrant.

213. If any person accused of any offence, and who has been admitted to bail to appear, upon any remanded examination, before any magistrate or justice, shall fail to appear at the time and place at which he is bound to appear, then, unless some explanation accounting for the absence of such accused to the satisfaction of the magistrate or justice then sitting and

Warrant
may issue
against
any person
wilfully
failing to
appear,
having
been ad-
mitted to
bail.

PART II. having jurisdiction in the matter shall be given,

And recognizances of accused and sureties shall be estreated.

Form of warrant, and provisions as to executing same.

such magistrate or justice shall issue a warrant to apprehend such accused person, and shall also estreat the recognizance of such accused, or of any surety or sureties who have become bound for his appearance.

214. Any such warrant may be in the form (R) in the Appendix, or to the like or similar effect, and may be executed by any constable or other officer of the peace, whether holding the same or not, in any part of the United Kingdom of Great Britain and Ireland. No such warrant shall be required to be backed; nor shall any endorsement thereon, or further authority, be required as a condition precedent to the execution thereof, any law, statute, or custom to the contrary notwithstanding.

No person wilfully failing to surrender to his bail to be entitled to be again bailed, unless magistrate or justice before whom he shall be brought thinks fit.

215. No person who has wilfully failed to appear before any magistrate or justice, having been admitted to bail, and against whom a warrant has been issued in consequence of such default, shall be thereafter entitled to be admitted to bail as of right; but such person may be admitted to bail, if the magistrate or justice before whom such person shall be brought, having jurisdiction in the matter, shall think proper to so admit him.

Course to be pursued where evidence insufficient to justify committal of accused for trial.

216. If, at the close of the prosecution, the magistrate or justice, before whom any accused shall be brought or appear, shall be of opinion that the evidence adduced is not sufficient to justify him in committing such accused person for trial, such magistrate or justice shall forthwith order such accused to be discharged as to the offence then having

been inquired into, and such accused shall be discharged therefrom accordingly. PART II.

217. The fact that any accused person has been discharged in any inquiry before a magistrate or justice, in accordance with the last preceding clause, for want of sufficient evidence, shall not prevent any magistrate or justice from holding another inquiry, and causing such accused to appear or be brought before him, if further evidence shall be afterwards obtained. Discharge for want of evidence not to bar a subsequent inquiry.

218. If, at the close of the prosecution, the magistrate or justice, before whom any person accused of any offence against this Code shall be brought or appear, shall consider that the evidence raises a strong or probable presumption that the accused has committed the offence with which he is charged, and that a jury upon such evidence will be reasonably likely to convict the accused, such magistrate or justice shall inform the accused that it is his intention to commit him to take his trial unless he shows some good cause why he should not be so committed. Course to be pursued where the evidence for the prosecution raises presumption of guilt of accused.

219. The accused, or his counsel or solicitor, shall thereupon be entitled, if he shall so desire, to address the magistrate or justice, and to show cause why the accused should not be committed for trial; and to call any witness able to testify to anything relevant to the offence charged against the accused, or to his defence thereto. If the accused or any person jointly accused with him has not been already examined, he or they may be examined for the defence at this stage. Accused entitled to show cause why he should not be committed for trial; and to call witnesses, and be examined.

220. Every witness called for the defence shall be Evidence

PART II. examined, and when necessary, re-examined by or on behalf of the accused and may be cross-examined by or on behalf of the prosecution; and in all other respects the evidence of every such witness so called for the defence shall be taken in the same manner as the evidence of the witnesses called for the prosecution is hereby directed to be taken, and the same shall be reduced into writing, or taken down in shorthand and transcribed, read over, signed or marked by the witness, and signed by the magistrate or justice before whom the same is read over and signed, and in the presence of the same persons, and shall be dealt with in all other respects whatsoever in like manner, as is hereby provided in the case of the evidence of the witnesses for the prosecution.

Provision
for custody
of books
and docu-
ments
given in
evidence
during
prelimi-
nary in-
quiry.

221. Whenever, in any inquiry before a magistrate or justice under the provisions of this Code, any book, paper, or document whatsoever is given in evidence on either side, such magistrate or justice may, in his discretion, direct either that the same remain in the custody of the Court, and be kept with the depositions, or that the party giving the same in evidence furnish a copy thereof, or of so much thereof as relates to the charge then being inquired into; and, in the latter case, it shall be the duty of the clerk taking the depositions to examine the copy with the original so given in evidence, and to certify that the copy is a true copy of such original, or of so much thereof as is material; and such copy so certified shall be kept with the depositions in the case.

Course to
be pursued
if, after

222. If after hearing the accused, or his counsel or solicitor, and the examination of the accused and the

evidence of the witnesses called for the defence (if any), the magistrate or justice shall nevertheless be of opinion that it is his duty to commit the accused (or if more than one, all or either of them) for trial, such magistrate or justice shall thereupon declare such intention, and when the accused who is to be committed for trial is entitled to be admitted to bail, as of right, shall fix the bail to be given by such accused; or in any case in which to take or refuse bail is discretionary with such magistrate or justice he shall state whether he grants or refuses bail in the case of such accused, or either of them, if more than one; and if he grants the same, shall fix the number of sureties and the amount of bail to be given by each, and also the amount of the recognizance to be entered into personally by the accused or either of them. Such magistrate or justice shall further cause to be reduced into writing, and to be read over in the presence and hearing of the accused (or if more than one be jointly charged, of every of them), the specific offence or offences in respect of which he commits such accused for trial; and such statement shall be signed by such magistrate or justice, and shall be annexed to and be deemed part of the depositions in the case.

PART II.
—
hearing,
the de-
fence,
magistrate
or justice
decides to
commit
accused
for trial.

Offence
for which
accused
committed
to be
stated in
writing,
and be
annexed to
and form
part of de-
positions.

223. If such magistrate or justice shall be of opinion that the accused (or if more than one be jointly charged, some one or more of them) ought not to be committed for trial, such magistrate or justice shall so declare, and shall discharge the accused (or if, more than one, such one or more of them as to whom he shall be of such opinion) as to the said offence which has been inquired into by such magistrate or justice.

If, after
hearing
defence,
magistrate
or justice
decides
not to
commit
for trial,
accused to
be dis-
charged.

PART II.

Where
person
committed
for trial
and not
bailed to
be de-
tained.

224. Any accused person who is committed for trial under the provisions hereof, and who is not then and there released on bail, shall, subject to any provision in this Code contained, during the interval between such committal and trial (or in any case in which the magistrate or justice shall consent to admit such accused to bail, until such bail shall be duly given), be conveyed to and detained in the place by law provided for the detention of accused persons pending trial in the county or place where such accused person is appointed to be tried.

Provision
where
accused
committed
for trial in
county not
within
jurisdic-
tion of
commit-
ting
magistrate
or justice.

225. Provided that where an accused person, not being admitted to bail, is committed to take his trial in some county or place not being within the jurisdiction of the magistrate or justice who commits such accused for trial, such magistrate or justice may, at the time of committing the accused, direct that such accused be taken, in the first instance, to the place by law provided for the detention of accused persons pending trial within the jurisdiction of such magistrate or justice, and thence conveyed to the place by law provided for the detention of accused persons pending trial in the county or place where such accused person is appointed to be tried.

Form and
effect of
warrant of
commit-
ment.

226. Upon any magistrate or justice committing any accused person for trial, who is not released upon bail under the provisions of the last preceding clauses, such magistrate or justice shall cause to be made out a warrant in one or other of the forms (S or SS) in the Appendix hereto, according to the circumstances of the case. Such warrant shall be under the hand of such magistrate or justice, and

shall be a full and sufficient authority in law to the persons to whom the same is addressed respectively, and they are hereby severally required to observe and obey the directions in such warrant contained, and on the part of each to be observed and performed.

PART II.

227. Every recognizance entered into, either by an accused person or any surety consenting to become bound for the appearance of such accused, shall bind each of the persons who enters with it, that such accused shall appear at any time and place named in such recognizance, or thereafter to be appointed and directed.

Condition of recognizance to be entered into by surety for an accused.

228. Whenever any magistrate or justice shall commit any person for trial under the provisions hereof, the Court to which such person shall be committed shall be (unless otherwise hereby enacted) either the Court or one of the Courts then next to be holden in or for the county or district in which the offence, or any act forming a material part thereof, was committed, and having jurisdiction to try the same; or the Court or one of the Courts having such jurisdiction then next to be holden in or for the county or district in which such magistrate or justice has held a preliminary inquiry.

To what Court a magistrate or justice shall commit.

229. In the case of any offence which courts of quarter sessions have jurisdiction to try, a magistrate or justice may nevertheless commit the accused for trial before a Judge of the High Court of Criminal Justice, in any case of more than ordinary difficulty or complexity, either of law or fact.

Provision for case of exceptional difficulty triable at sessions.

230. Upon any magistrate or justice committing

Upon com-

PART II. any person for trial, such magistrate or justice shall then and there cause to be served personally upon every witness whose deposition has been taken under the provisions hereof, a summons commanding such witness to appear at the Court where the accused is to be tried, and give evidence upon the trial, and in case there shall be in the custody or under the control of any such person any book, document, or thing whatsoever relating to the charge, commanding such person to produce the same at the trial. Every such summons shall require the person served with the same to attend and give evidence, or attend and produce (or both), at the time and place mentioned in such summons, and also at any and every other time or place where and when any such person may be ordered to be tried, and of which he shall receive notice. Such summons shall be in the form (T) in the Appendix hereto, or some other like or similar form, and shall be signed by such magistrate or justice.*

mittal
of any
accused,
witnesses
to be
served
with sum-
mons to
attend
trial, and,
where
necessary,
to produce
books and
docu-
ments.

231. Every such summons shall be endorsed with a certificate under the hand of the magistrate or justice causing such summons to be served, stating the number of times the witness has attended before

Certificate
of ex-
penses of
witness
attending
before

* The present practice is to bind over the witnesses by recognizance, and to serve a notice upon them subsequently. But as neither a married woman nor a minor can lawfully enter into a recognizance, it follows that in a great number of cases the recognizance entered into is absolutely void. In strictness, the husband of a married woman, and in the case of a minor, some next friend, ought to become bound; and in default of this a married woman or infant might, as the law now stands, be committed to prison until the trial. In practice, however, as a general rule, both married women and infants are bound over, notwithstanding that to do so is absolutely worthless in law. A summons or subpoena is obviously a far preferable course, in every case, to secure the attendance of witnesses.

him, and the amount which, in the opinion of such magistrate or justice, and having regard to the Rules regulating the allowance to witnesses from time to time in force under the provisions hereof, ought to be paid to such witness for his loss of time and expenses in so attending as a witness before him. Such certificate shall be in the form (U) in the Appendix hereto, or some other like or similar form.

PART II.
magistrate
or justice.

232. Upon every such committal, the magistrate or justice committing any accused person for trial shall cause to be delivered forthwith to such accused person, or if two or more be jointly charged, to each of such accused persons, or to any one whom either of such accused persons may, by writing, respectively appoint or direct to receive the same, without charge, a copy of the depositions taken upon the hearing of any charge against such accused person or persons, and of any books, papers, or documents put in evidence, or of so much thereof as relates to the charge.*

Accused,
upon com-
mittal, to
be fur-
nished,
without
charge,
with a
copy of the
deposi-
tions and
of docu-
ments,
etc., put
in evi-
dence.

233. No objection shall be allowed to be taken by any person, after conviction, by reason only that he was committed to take his trial, or that he was tried at a place not hereby authorized, unless it be shown that the accused was in fact materially prejudiced thereby.†

No objec-
tion to be
allowed by
reason
only that
defendant
committed
to wrong
place.

234. Whenever any accused person is committed

Summons

* An accused is entitled, after committal, to a copy of the depositions, but upon payment only (11 & 12 Vict. c. 42, s. 27, and 30 & 31 Vict. c. 35, s. 4).

† This and other similar provisions will much simplify the law as to *venue*, whilst providing, it is believed, sufficiently against the possibility of any injustice being done.

PART II. for trial by any magistrate or justice under the provisions hereof, and it is desired to secure the attendance upon such trial of any person who has not been called or examined as a witness upon the preliminary inquiry, but who is able to give material evidence, or to produce anything relevant to the charge (or both), either on behalf of the prosecution or for the defence, it shall be lawful for either side to apply to such magistrate or justice, or to any other magistrate or justice having the same jurisdiction, for a summons commanding such person to attend at the trial, and give evidence or produce (or both); and any such magistrate or justice, if satisfied that such person is able to give any material evidence or to produce anything relevant to the charge, shall thereupon cause a summons, in form (TT) in the Appendix hereto, or some other like or similar form, to be served upon such person requiring him to attend personally, to give evidence or produce (or both), at a time and place to be mentioned in such summons, or of which notice in writing shall be given him.

to compel
attend-
ance upon
trial of any
person not
examined
in the pre-
liminary
inquiry.

Provision
as to
service.

235. Every such summons shall be served, either personally or otherwise, in the manner hereinbefore provided in the case of summonses by this Code authorized to be issued by any magistrate or justice, to require or compel the attendance before him of any person; and all and several the provisions hereinbefore contained in reference to the service of a summons in any part of the United Kingdom, and proof of such service, shall be deemed equally to apply and extend to any summons issued under the provisions of the last preceding clause.

236. If any person served with any such summons to attend upon any trial does not reside or is not within the county or district where such trial is appointed to take place, the magistrate or justice issuing such summons shall cause a reasonable sum to be paid to the person so summoned, at the time of the service of such summons, to cover his costs and expenses in proceeding to the place of trial, to attend thereat in obedience to such summons, and shall certify by endorsement under his hand upon such summons the amount of conduct-money so paid.

PART II.
Conduct money if witness not within county or place where trial to be held.

237. Whenever, under the provisions hereof, any magistrate or justice commits any person for trial, such magistrate or justice shall forthwith transmit to the proper officer of the Court in which such trial is appointed to take place the following documents, viz. :

Transmission of depositions, etc., by magistrate to place of trial.

- (a) The information (if any) ;
- (b) The deposition of every witness examined in the course of the preliminary inquiry ;
- (c) The deposition of the accused (if any) ;
- (d) Every document put in evidence in any preliminary inquiry, or if the same or either thereof has not remained in the custody of the Court, a certified copy thereof ;
- (e) Any information, deposition, or document transmitted in the case to any magistrate or justice under any provision of this Code ;
- (f) Any recognizance entered into by the accused, and by any surety, for his appearance or otherwise, in case the accused has been admitted to bail ; or, if such accused

PART II.

shall be afterwards admitted to bail, such recognizances shall forthwith thereupon be transmitted to such officer ;

- (g) A duplicate of every summons served upon any person requiring his attendance upon the trial, under the hand of the magistrate or justice who caused the same to be served.

And in any case in which any magistrate or justice shall cause any summons to be served in pursuance of clause 233 of this Code, he shall forthwith, upon the service thereof, transmit to the said officer a duplicate thereof under his hand.

Power to magistrate or justice committing any person for trial, who is unable from poverty to retain solicitor or counsel upon his trial, or to the Court, to grant a certificate.

Such certificate authority to treasurer, or other person charged with payment of costs, to pay the sum mentioned therein,

238. Whenever any person is committed to take his trial for any offence against this Code, and is unable by reason of poverty to employ a solicitor or counsel to defend him upon his trial, the magistrate or justice committing such person for trial, or (if no such certificate as is by this clause authorized shall have been granted by the committing magistrate or justice) the Court before whom such person is appointed to be tried, shall, upon the application of such person and upon being satisfied of his inability, grant to such person a certificate in the form (V) in the Appendix hereto ; and such certificate, being produced after the trial to the treasurer or other person to whom orders for the payment of costs are, under the provisions hereof, authorized to be made, shall be an authority to him, and he is hereby required to pay, upon production to him of such certificate, to the solicitor or counsel whom the accused has, by an endorsement in writing made upon such certificate, authorized to defend him, or to any

other person duly authorized by such solicitor or counsel to receive the same on his behalf, the amount mentioned in such certificate.*

PART II.
after trial,
to solicitor
or counsel
of accused.

239. No such certificate granted by any magistrate or justice, or by any Court, under the provisions of the last preceding clause, shall authorize the payment for the purposes therein mentioned of any other or greater sum, nor shall any other or greater sum be paid under any such certificate, than shall be from time to time authorized by any Rules made by the High Court of Criminal Justice and the Secretary of State, and from time to time in force under the powers hereinbefore contained.

No such
certificate
to autho-
rize pay-
ment of
greater
sum than
allowed by
regula-
tions to be
made.

240. If any person whatsoever, who has been served with a summons to attend and give evidence, or to produce, upon the trial of any person under the provisions hereof, shall omit or neglect to attend at the time and place mentioned in such summons, or shall wilfully neglect or omit to produce, as commanded by the said summons, such person may be adjudged by the Court or Judge before whom such trial shall be appointed to take place, upon proof of due service of such summons to the satisfaction of such Court or

Witness
served
with sum-
mons, on
trial not
appearing,
how to be
dealt with.

* It will, I think, be conceded that no person ought to be undefended in a criminal trial, especially if he be innocent, and the prosecution be conducted by counsel against him, solely by reason of poverty. In cases where an accused is represented by counsel, and a prosecutor has not thought proper to incur any expense, the law supplies the deficiency, and counsel is provided at the cost of the county.

In trials for murder, the humanity of a judge usually prompts him, where the prisoner is undefended, to request a member of the bar to watch the case; and the sheriff will sometimes come to the aid in similar circumstances. The reproach justly attaching to our law, that in many instances it exhibits a cynical disregard in the case of those who are most wretched and helpless, cannot be too soon removed.

PART II. Judge, and, in any case where, under the provisions hereof, conduct money is required to be paid upon the service of any such summons, that proper conduct money has been duly paid, to pay and forfeit to the Crown the sum mentioned in such summons; and upon any such order being made, the same shall be duly notified to the person making such default; and the sum so adjudged to be paid shall, unless paid within seven clear days after the same being notified as aforesaid, or otherwise ordered by such Court or Judge, be levied by distress upon the goods and chattels of the person making default in payment of the sum so adjudged to be paid; and, in addition to such order and forfeiture, any person disobeying the said summons in any respect shall, unless he shall prove satisfactorily that such disobedience of the said summons was not wilful, be deemed guilty of a contempt of the High Court of Criminal Justice, and be liable to be dealt with and punished in the manner prescribed by this Code in the case of persons guilty of contempt of the said High Court.

Certificate
by officer
of Court of
non-ap-
pearance
of witness
to be
*primâ
facie* evi-
dence.

241. A certificate, signed by the proper officer of the Court where any person summoned to give evidence or to produce ought to have appeared to give evidence or to produce, either or both, as the case may be, of the non-appearance of any such person or non-production in obedience to the said summons, shall be sufficient *primâ facie* evidence, in any proceeding, of the non-appearance of such person or non-production respectively.

Witnesses
attending
trial upon

242. Every person who is served with a summons to attend upon the trial of any person under the

provisions hereof, and who duly attends in obedience thereto, shall, unless the Court shall otherwise order, be entitled to receive such sum for his loss of time and expenses in attending upon the said trial as is hereinafter authorized to be paid.

PART II.
summons
entitled to
expenses.

243. In any case in which any magistrate or justice shall decide not to commit any person for trial, who has been brought or has appeared before him charged with having committed any offence against this Code, the prosecutor may, at any time within three clear days after such decision is given, declare in writing his intention to prefer an Act of Accusation against such person before any Court to which such accused might have been committed for trial, and enter into a recognizance with one or two sufficient surety or sureties, and in such sum as shall be required under the provisions of the next succeeding clause, conditioned to prefer and prosecute such Act of Accusation, and to obey such order as to costs or otherwise as shall be made by any Court before whom the case may be tried.

Where
magistrate
or justice
refuses to
commit,
prosecutor
may de-
clare his
intention
of prefer-
ring Act
of Accusa-
tion, but
must enter
into recog-
nizances.

244. Such declaration and recognizance respectively shall be in the forms (W and WW) respectively in the Appendix hereto, or to the like or similar effect. The number of sureties, and the amount for which such surety or sureties is or are to become bound, and the sum in which the prosecutor is to enter into his personal recognizance, shall be fixed by the magistrate or justice who refused to commit, or some other magistrate or justice having the like jurisdiction.

Form of
declara-
tion and
recogniz-
ance.
Number of
sureties
and
amount to
be fixed by
magistrate
or justice.

245. Upon such declaration being made, and such Magis-

PART II. recognizances as aforesaid being duly entered into, the magistrate or justice taking the same shall forthwith cause notice thereof in writing to be served personally upon the accused, and that he is required to attend and plead to an Act of Accusation to be preferred against him at a time and place to be specified in such notice. Such notice may be in the form (X) in the Appendix hereto, or to the like or similar effect. Such magistrate or justice shall also transmit to the proper officer of the Court in which the prosecutor has become bound to prefer such Act of Accusation :

trate or
justice to
give notice
to accused,
and to
transmit
documents
to place
of trial,
when
prosecu-
tor has
entered
into recog-
nizances
to prefer
Act of
Accusa-
tion.

- (a) The information (if any);
- (b) The deposition of every witness examined in the preliminary inquiry;
- (c) The deposition of the accused (if any);
- (d) Every document put in evidence in the course of the inquiry, or if the same or either thereof has not remained in the custody of the Court, a certified copy thereof;
- (e) Any information, deposition, or document which may have been transmitted in the case to any magistrate or justice under the provisions of this Code;
- (f) The recognizances entered into by the person becoming bound to prefer an Act of Accusation, and of any surety or sureties party to such recognizances;
- (g) A duplicate of the notice served upon the accused, requiring him to attend and plead to the Act of Accusation to be preferred against him.

246. Every accused person against whom any person has declared his intention, and has duly entered into recognizances, to prefer an Act of Accusation, shall be entitled to receive, without charge, a copy of the depositions taken in the case; and, if he so requires, a summons or summonses may be issued and served, to compel the attendance of any necessary and material witness or witnesses for his defence upon the trial; and all and several the provisions hereinbefore contained in relation to the issuing, service, payment of conduct money, and transmission of duplicate summonses shall equally apply to any summons issued under the provisions of this clause, in the same manner as though such accused had been committed for trial by a magistrate or justice under the provisions hereof.

PART II.

Accused to be furnished with copy of depositions, and summonses to compel attendance of witnesses on his behalf at the trial may be issued.

247. Any person who has so declared his intention, and has duly entered into recognizances, to prefer an Act of Accusation against any person under the provisions hereof, shall be entitled to be furnished with a copy of the depositions taken in the case, and to have a summons or summonses issued and served upon any necessary and material witness or witnesses in support of such Act of Accusation, and the same shall be issued and served, and a duplicate thereof transmitted to the proper officer, in the same manner in all respects as though the person against whom such Act of Accusation is to be preferred had been committed for trial by a magistrate or justice; save and except that such copy depositions shall be supplied, and such summons or summonses shall be issued and served, only upon payment of such reasonable fee

Prosecutor who has entered into recognizances to prefer an Act of Accusation, to be entitled to same on payment.

PART II. for such copy depositions and for every such summons respectively, including any necessary conduct money, as may be authorized by any Rules to be from time to time made and in force under the provisions of this Code.

Transmission by magistrate of duplicate summons or notice *prima facie* evidence of service.

248. The transmission by any magistrate or justice of a duplicate of any summons or notice required to be served upon any person under any of the provisions of this Code, purporting to be under the hand of any magistrate or justice, in accordance with the provisions hereinbefore contained, shall be taken as presumptive evidence that such summons or notice respectively has been duly served upon the person named therein, unless and until the contrary be shown; and a certificate endorsed upon any such summons of the amount of conduct money paid therewith, under the hand of a magistrate or justice, shall be sufficient evidence of the payment thereof, unless and until the contrary be shown.

Where prosecutor has entered into recognizances to prefer Act of Accusation, after dismissal of case by magistrate or justice, Court may order him to pay the costs of accused and expenses of witnesses, to be taxed.

249. Whenever any person has declared his intention, and has entered into recognizances, to prefer an Act of Accusation against any person under the provisions of clause 242 of this Code, and the person against whom such Act of Accusation is preferred shall be adjudged to be "Not guilty" thereon, the Court before whom such Act of Accusation is tried, in any case in which it shall be of opinion that the preferring of such Act of Accusation was unreasonable, shall direct and order that the person who preferred the same shall pay to the person accused thereby the just and reasonable costs, charges, and expenses of such accused person,

and also the expenses of his witnesses (if any) in attending at the place of trial, caused and occasioned by, or consequent upon, the preferring of such Act of Accusation, to be taxed by the proper officer of the Court in which such trial takes place; and in the event of default being made in payment of the sum or sums allowed by such officer upon such taxation, for the space of seven days thereafter, it shall be lawful for the Court before whom such Act of Accusation was tried to estreat the recognizances entered into before the magistrate or justice under clause 242 hereof, and to enforce payment thereof, and out of the proceeds to pay to the person or persons respectively entitled the sum or sums allowed upon the said taxation.*

PART II.

If amount
allowed on
taxation
not paid,
how to be
enforced.

* Except in the case of certain specified misdemeanours, any one may, by the present law, prefer an indictment against any other person. In the excepted cases, however, no indictment may be preferred, unless the prosecutor shall have entered into a recognizance to prefer and prosecute the same—a precaution intended to prevent indictments being preferred vexatiously, or for the purpose of extortion. In these cases, if the accused is acquitted, and the Court before whom the trial has taken place considers the prosecution unreasonable, it may order the prosecutor to pay to the accused the costs of and occasioned by the prosecution (30 & 31 Vict. c. 35, s. 2).

I submit that there should, in every case, be a preliminary investigation before a magistrate or justice; and that, if the charge is then dismissed, a prosecutor should, in every case, only be permitted to prefer an Act of Accusation at his own risk, and should vouch his *bona fides* by first giving security for costs, in the event of an acquittal taking place, and the Court ordering payment of costs by the prosecutor on the ground that the prosecution is unreasonable.

CHAPTER IX.

TAKING THE EXAMINATION OF PERSONS DANGEROUSLY
ILL.

PART II.
Power to
take ex-
amination
of person
danger-
ously ill
and not
likely to
recover.

250. WHENEVER it is shown, to the reasonable satisfaction of any magistrate or justice, that any person dangerously ill, and, in the opinion of some registered medical practitioner, not likely to recover from such illness, and then being within the jurisdiction of such magistrate or justice, is able and willing to give material information relating to any offence against this Code, or relating to any person charged with any such offence, and it shall not be practicable for any magistrate or justice to take an examination or deposition of such person so being ill, in accordance with the provisions hereinbefore enacted, and no such deposition of such person shall have been in fact taken and completed, it shall be lawful for such magistrate or justice, and he is hereby required, to proceed to the place where such person is, and to take, in writing and on oath, the statement of such person; or the same may be directed by such magistrate or justice to be taken down in his presence in shorthand, and transcribed and read over to the person making such statement,

either then and there, or at some subsequent time, in the presence of such magistrate or justice, or some other magistrate or justice having the like jurisdiction. PART II.

251. Prior to taking such statement, the magistrate or justice proposing to take the same shall cause notice, in writing under his hand, of such his intention, and of the time and place when and where he proposes to take such examination, to be served personally upon any person against whom such statement is to be taken (whether prosecutor or accused or otherwise), if his name and address be known, or left with some adult person at the house where such person resides or carries on business, a reasonable time, having regard to the circumstances of the case, before proceeding to take such statement. In the event of any such person being then known to be in actual custody, such magistrate or justice shall at the same time, by an order in writing under his hand, require the governor or keeper of the prison where such person is confined, to convey him to the place, and at the time mentioned in the said notice, for the purpose of being present at the taking of the statement; and such governor or keeper shall cause such prisoner to be conveyed accordingly, in obedience to the said order.

Notice to be served on person against whom such examination to be taken.

If such person in custody, order to issue to produce him at examination.

252. Any person against whom any such statement is taken, shall be entitled to be present thereat, and at any time when the same is read over to the person making the same; and the same shall be taken and read over in his hearing, and he shall be entitled, either himself, or by his counsel or solicitor,

Examination, how to be conducted.

PART II. to cross-examine the person whose statement is taken; and such cross-examination, and any re-examination following thereupon, shall each be reduced into writing, or taken down in shorthand, question and answer, and transcribed and read over in the same manner as is hereinbefore provided in the case of the first statement made by the person so being ill as aforesaid; and every reasonable facility shall be afforded to any such person, who is in custody as aforesaid, to be represented by, and to give confidential instructions to, counsel or solicitor in like manner as is hereinbefore provided in the case of a person brought before a magistrate or justice accused of having committed an offence against this Code.

Magistrate or justice to sign deposition, and add a statement of his reasons for taking same, etc., and to transmit same.

253. Upon any such statement being taken and read over as hereinbefore provided, the magistrate or justice in whose presence it is read over shall sign it, and shall add thereto a statement of his reasons for taking it, and of the day and place when and where the same was taken and read over respectively, and of the names of any other persons (if any) present at the taking and reading over thereof; and if the same relates to any offence against this Code, for which any accused person is undergoing a preliminary inquiry before any magistrate or justice (other than the one by or before whom the statement is taken or read over), shall transmit the same, with the said addition, and also a duplicate of any notice served upon any person of the intention of any magistrate or justice to take such statement, and of any order directed to the governor or keeper of any prison to bring up any such person,

to such magistrate or justice; and whenever any such statement is so transmitted to, or is taken or read over by or before any magistrate or justice holding such inquiry, it shall be deemed to be part of the depositions in the case. If the statement relates to any offence against this Code for which any accused person has been already committed for trial, or against whom any person has duly entered into recognizances to prefer an Act of Accusation, the same, together with the said duplicate notice and order, shall be transmitted to the proper officer of the Court at which any such person is appointed to be tried; and in all other cases the magistrate or justice shall transmit the statement to the clerk of the peace of the county or place in which he has taken the same, who is hereby required to preserve, and file it of record.

254. Every prosecutor or accused person to whom any such statement relates shall be entitled to receive from the person having the custody of the same, a copy thereof, and of any other document transmitted therewith, in the same way and upon the same terms in all respects as is provided in the case of depositions taken against an accused. Subject to any Rules from time to time made and in force under the provisions of this Code, any person shall be entitled to receive from the person having the custody of the same, a copy of any such statement, upon obtaining an order for that purpose from the High Court of Criminal Justice, or a Judge thereof.

Any person to whom statement relates to be entitled to a copy.

CHAPTER X.

SUMMARY JURISDICTION OF MAGISTRATES, AND JUSTICES
IN PETTY SESSIONS.*

PART II. 255. WHENEVER any person is charged before any stipendiary magistrate, or before two or more of Her Majesty's justices of the peace in petty sessions assembled, with having committed any offence against this Code which courts of quarter sessions have jurisdiction to try, after the evidence given in support of such charge has been completed, and is, in the opinion of such magistrate or justices, sufficient to require him or them to commit the person so charged to take his trial; if the case appear to such magistrate or justices to be one which may be properly disposed of in a summary way, and may be adequately punished or dealt with by the powers conferred by this clause; then and in that case such magistrate or justices, having first caused the charge preferred against the accused to be formally reduced into writing, shall read the same to such accused person, and shall then inquire of him whether

Jurisdiction of magistrate or justices in petty sessions to deal summarily with any person pleading guilty to offence against this Code which quarter sessions have jurisdiction to try.

* The jurisdiction proposed by this chapter to be given to magistrates and justices in petty sessions is an important, but, it is submitted, not excessive, extension of the present law. If the proposal were adopted, it would effect a very considerable saving of expense to the country.

or not it is his wish voluntarily to plead to the same; first, however, carefully explaining to and causing such accused to clearly understand that he is not obliged to plead or answer before such magistrate or justices at all, unless he thinks proper so to do; but that he is entitled, if he wishes it, to have the opinion of a jury as to whether he is innocent or guilty of the offence of which he is accused.

PART II.
Accused to understand he is not obliged to plead before magistrate or justices, but entitled to be tried by a jury.

256. If such accused shall thereupon say that he is not guilty, the magistrate or justices shall proceed in the manner hereinbefore provided and enacted in the case of persons accused of offences against this Code, and brought or appearing before a magistrate or justice to undergo a preliminary examination. If, on the other hand, such accused shall say that he is guilty of the offence with which he is charged, and that he desires to be convicted and dealt with summarily by such magistrate or justices, such magistrate or justices shall cause a plea of "Guilty" to be entered upon the proceedings, and shall thereupon convict the accused of the offence to which he has pleaded guilty, and shall have all and every the powers as to sentencing or abstaining from passing any sentence, and otherwise dealing with the person so convicted by requiring such person to enter into a recognizance, with or without a surety or sureties, to come up for judgment if and when called upon, or to be of good behaviour and keep the peace or otherwise; or making any order as to the costs of the prosecutor and witnesses attending before such magistrate or justices, restitution of property, and compensation for damage or injury respectively, that are hereby respectively

If accused pleads "Guilty," and desires to be dealt with summarily, plea may be entered and accused convicted. Magistrate or justices to have same powers as court of quarter sessions, but not to sentence any person to any greater punishment than imprisonment, with or without hard labour, for twelve months.

PART II. vested in any court of quarter sessions in relation to the same subject matter : provided that no magistrate or justices shall have power to sentence any person, under the provisions of this clause, to any greater punishment than to be imprisoned, with or without hard labour, for a term not exceeding twelve calendar months, notwithstanding that power is by this Code conferred upon courts of quarter sessions to pass a more severe sentence.

Proviso
where
value of
property
in respect
of which
accused
convicted
does not
exceed
twenty
shillings.

257. Nothing in the last preceding clause shall authorize any magistrate or justices to sentence any person to any greater punishment than to be imprisoned, either with or without hard labour, for any period not exceeding three months, where the value of the property in respect of which a conviction takes place before any such magistrate or justices does not exceed twenty shillings ; but in such case a sentence of three months' imprisonment, with or without hard labour, shall be the maximum punishment which any magistrate or justices shall be authorized to pass.

Jurisdic-
tion in
case of
juvenile
offenders.

258. Nothing in this chapter hereinbefore contained shall apply to any person, accused of any offence against this Code, whose age does not, in the opinion of the magistrate or justices before whom he is brought or appears, exceed sixteen years ; but whenever any such person is charged before any stipendiary magistrate, or before two or more of Her Majesty's justices of the peace in petty sessions assembled, with having committed any offence against this Code which courts of quarter sessions have jurisdiction to try, after the evidence given in support of such charge has been com-

pleted, and would, in the opinion of such magistrate or justices, be sufficient, if such accused were above the age of sixteen years, to require him or them to commit such accused to take his trial; if the case appear to such magistrate or justices to be one which may be properly disposed of in a summary way, and may be adequately punished or dealt with by the powers conferred by this clause; then and in that case such magistrate or justices, having first caused the charge preferred against the accused to be formally reduced into writing, shall, in the hearing of any parent or guardian of such accused then present, read the same to the accused, and shall inform such accused, and cause him and his parent or guardian, if present, clearly to understand, that the accused is not obliged to plead or answer before such magistrate or justices at all, unless he desires to do so; but that it is his right, if he or his parent or guardian wish it, to have the question whether he is innocent or guilty of the offence of which he is accused tried by a jury.

PART II.

Of what
accused
to be
informed.

259. If such accused, or his parent or guardian, shall thereupon object to the case being dealt with summarily, or if such accused shall say that he is not guilty, the magistrate or justices shall proceed in the manner hereinbefore provided and enacted in the case of persons accused of offences against this Code, and brought or appearing before a magistrate or justice to undergo a preliminary examination. If, on the other hand, no such objection shall be made, and the accused shall say that he is guilty of the offence of which he is accused, such magistrate or

Course
where
accused
pleads
"Guilty,"
and desires
to be
dealt with
sum-
marily.

PART II. justices shall cause a plea of "Guilty" to be entered upon the proceedings, and shall thereupon convict the accused of the offence to which he has so pleaded guilty, and may either commit the accused to the common gaol or house of correction within the jurisdiction of such magistrate or justices, there to be imprisoned, with or without hard labour, for any term not exceeding three calendar months; or, if the offence of which such accused is convicted is one punishable, upon conviction thereof before any court of quarter sessions, with penal servitude or imprisonment with hard labour, may direct such accused to be imprisoned for a term not exceeding ten days, and at the expiration of such term to be sent to, and detained in, some reformatory school duly certified according to law, for any period not being less than two nor more than five years. Or such magistrate or justices may, in his or their discretion, order any accused convicted before them, under the provisions of this clause, to forfeit and pay such sum, not exceeding five pounds, as the said magistrate or justices shall adjudge; or, if a male, may order such accused to be once privately whipped, either in addition to or in lieu of any other punishment which is by this clause authorized. Provided that if such magistrate or justices shall, upon the hearing of any such case, be of opinion that it is not expedient to inflict any punishment, he or they may either dismiss the person accused, absolutely, or may require him to find a surety or sureties for his future good behaviour, and discharge such accused upon the same being duly entered into.

Power to
commit to
reforma-
tory.

Power to
abstain
from in-
flicting
any
punish-
ment, or
to require
sureties.

In what

260. Nothing hereinbefore contained shall be

deemed to authorize any magistrate or justices to pass any other or greater sentence upon any person pleading guilty before him or them to any offence, under any of the provisions hereof, than is hereby authorized to be passed upon any person convicted of such offence before any court of quarter sessions; and no magistrate or justices shall, in any case, deal summarily with any person, under the provisions hereof, who is proved to have previously been convicted of any offence upon any Indictment or Act of Accusation punishable with penal servitude or imprisonment with hard labour, or to have been previously twice summarily convicted, in any part of the United Kingdom, of offences for which he might have been convicted and sentenced to imprisonment with hard labour, upon an Indictment or Act of Accusation, or for or in respect of any offence which courts of quarter sessions have not jurisdiction to try.

261. Whenever any person is charged before any justice with any offence which justices in petty sessions assembled have jurisdiction to convict of summarily under any provision in this Code contained, and the case is, in the opinion of such justice, one proper to be disposed of by justices in petty sessions assembled upon summary conviction, the justice before whom such person is so charged may, if he see fit, remand such accused, for further examination, to the next petty sessions, in like manner as, and subject to the same conditions as to bail and otherwise upon which, a justice is authorized to remand any person accused of any offence against this Code, under the provisions hereinbefore contained of this Code.

PART II.

cases
offender
may not
be dealt
with sum-
marily.

Powers
to one
justice
to remand.

PART II.

Accused persons to be entitled to assistance of counsel or solicitor.

And to call witnesses in mitigation of punishment.

Effect of summary conviction.

Form of summary conviction.

No summary conviction to be quashed, or commitment to be void,

262. In every case in which any person is charged before any magistrate or justices with any offence of which such person may be summarily convicted under any of the provisions of this Code, the accused shall be entitled to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or solicitor; and, notwithstanding any plea of "Guilty," the accused, or any counsel or solicitor representing such accused, shall be entitled to address the magistrate or justices upon the question of punishment, and to call and examine any witness to character or otherwise, in mitigation of punishment, that may be proper to be examined.

263. Every summary conviction before any magistrate or justices, under any of the provisions of this Code, and every sentence passed or order made in respect of or consequent upon any such conviction, shall take place and be made in open public court; and every such summary conviction shall have the same effect as a conviction upon any Act of Accusation for the same offence would have. Every person who is so convicted shall be released from all other or further criminal proceedings for the same cause.

264. Every summary conviction, under the provisions of this Code, shall be in one of the forms (Y or YY) in the Appendix hereto, or as nearly so as circumstances will admit.

265. No summary conviction, sentence, or proceeding, under the provisions of this Code, shall be quashed merely for want of form; and no warrant of commitment upon any such conviction shall be held void, or be liable to be set aside by reason only

of any defect of form, if the person named therein has in fact been duly and lawfully convicted of an offence against this Code. PART II.
—
merely for
defect of
form.

266. Every summary conviction under the provisions hereof shall be forthwith transmitted by the magistrate or justices, together with the depositions of every witness who was examined, the written charge, the plea of "Guilty" made by the person convicted, and a record of every sentence passed, or order made in respect of or consequent upon any such summary conviction, to the next court of general or quarter sessions for the county or place where such conviction takes place, there to be kept by the proper officer amongst the records of the Court. Every
summary
conviction
to be trans-
mitted,
with de-
positions,
etc., to
court of
quarter
sessions.

CHAPTER XI.

APPEALS FROM COURTS OF INFERIOR CRIMINAL JURIS-
DICTION TO THE HIGH COURT OF CRIMINAL JUSTICE.

PART II.

If any court of quarter sessions, or magistrate or justice, neglect or refuse to perform any legal duty, a rule may be granted to show cause by the Court, or a Judge thereof. Such rule may be discharged or made absolute, with or without costs.

If rule made absolute, respondent to obey same.

267. WHENEVER any act is, under the provisions of this Code, required to be done by any court of quarter sessions in a criminal case, or by any magistrate or justice, not being a purely discretionary act, and such Court, magistrate, or justice shall neglect or refuse to perform the same, an application may be made to the High Court of Criminal Justice, or a Judge thereof, either in Court or in Chambers, for a rule or summons calling upon such Court, magistrate, or justice to show cause why it or he neglects or refuses to perform the same; and such rule or summons may, in the discretion of such Court or Judge, be granted or refused; and, if granted, may be discharged, or such order made thereon, in either case either with or without costs, as to the Court or Judge before whom the same shall be heard shall seem right and just.

268. In any case in which any order shall be made upon any such rule or summons, the Court, magistrate, or justice, being served with an office copy of such rule or order under the seal of the High

Court of Criminal Justice, shall be bound forthwith PART II.
to obey the same.

269. Whenever any magistrate or justice shall, at any stage of the proceedings:*
- (a) Refuse bail in any case in which an accused is entitled to bail as of right.
 - (b) Refuse bail in any case in which, under the provisions hereof, it is discretionary with him to grant or refuse the same.
 - (c) In any case fix the bail at an excessive sum, or require an excessive number of sureties.
 - (d) Refuse without sufficient justification the bail of any responsible person duly tendered.

Appeal
from
magistrate
or justice
refusing to
admit an
accused to
bail.

In either of the said cases, it shall be lawful for an application to be made, by or on behalf of the accused, to the High Court of Criminal Justice, or

* An appeal from the refusal of any magistrate or justice to admit an accused person to bail lies to the Queen's Bench Division, or to a Judge thereof sitting at Chambers ("Blackstone's Com.," vol. iv.). In practice, however, the Judges invariably refuse to interfere with the magistrate's discretion pending remand, or until after the accused has been committed for trial. Where the preliminary inquiry before a magistrate is prolonged, this frequently involves serious hardship. The ground upon which this course is pursued seems to be based upon the assumption that the only source of information open to the Judge is the depositions; and that there may be facts known to the magistrate which these do not disclose, and which may have influenced his decision in refusing bail. Inasmuch, however, as the magistrates' clerk generally attends upon the application, and the prosecutor or his counsel or solicitor is also heard, there is no reason why the mind of the Judge should not be fully informed of every material fact upon which a correct judgment can be formed. In any case a hard and fast rule, such as that which exists, and which is hardly ever departed from, in many instances works harshly and oppressively, and should rather give place to a discretion exercised in accordance with the merits of each particular application.

PART II. a Judge thereof, either sitting in Court or in Chambers, for a rule or summons calling upon such magistrate or justice, and if such Court or Judge shall think fit, upon the prosecutor, to show cause why the accused should not be admitted to bail, either in his own recognizance, or with such surety or sureties and in such amount as to such Court or Judge shall seem fit, and why such surety or sureties should not justify, and the recognizances be entered into, before such Court or Judge, or as such Court or Judge shall direct.

If accused appear entitled to bail as of right, peremptory rule to show cause to issue, and, unless good cause shown, Court or Judge to admit accused to bail.

270. If, upon any such application, it shall appear to the Court or Judge that the accused is entitled to bail as of right, and that the magistrate or justice has neglected or refused to fix or take the same, a peremptory rule or summons to show cause, returnable at the earliest practicable moment, either in Court or Chambers, shall be granted; and upon the return of the rule or summons, unless good cause to the contrary be shown, the Court or Judge before whom the same shall be heard shall fix the bail to be taken, and shall either accept the personal recognizance of the accused, or if a surety or sureties be required in addition thereto, may either allow the same to justify and enter into recognizances (either or both) before such Court or Judge, or may make such other order, and also such order as to costs, as to such Court or Judge shall seem just and right.

Where bail discretionary, rule may be granted or refused.

271. In any other case the Court or Judge may either grant or refuse a rule or summons, as to such Court or Judge shall seem right.

Where

272. In any case in which a rule or summons shall

be granted under the provisions of either of the last preceding clauses, such rule or summons shall, as well as calling upon the magistrate or justice to show cause, require him to produce, upon the return thereof, the original or a certified copy of the depositions taken against the accused; and it shall be the duty of the magistrate or justice to whom such rule or summons is addressed to produce, or cause to be produced, the same upon the return of the said rule or summons. No *certiorari* shall in future be required for this purpose, nor shall any be granted.*

PART II.

bail discretionary, and rule granted, original or certified copy of the depositions to be produced on return of rule.

No *certiorari* necessary.

273. In any case in which, under the discretionary power by clause 270 enacted, the Court or Judge shall grant a rule or summons, the same may be directed to be made returnable either in Court or in Chambers, and the Court or Judge before whom the same is returnable may either refuse to make any order thereon, or may make such order as to such Court or Judge shall appear right and just, and in either case may make any order as to costs as to them shall seem fit.

Rule granted may be made returnable in Court or Chambers, and an order made or refused.

274. Throughout the Act passed in the session of Parliament holden in the twentieth and twenty-first year of the reign of her present Majesty, chapter 43,† so far as the same relates and extends

Powers and authority conferred by 20 & 21 Vict. c. 33,

* This would simplify the procedure, and effect a saving of quite unnecessary expense which now has to be incurred.

† This Act gives a right to either party, upon any information or complaint over which magistrates or justices have summary jurisdiction, who is dissatisfied with their determination, as being erroneous in point of law, to require a case to be stated for the opinion of one of the superior Courts, which expression is defined to mean in England the Supreme Courts of Law at Westminster; and, for Ireland, the Supreme Courts of Law at Dublin. The Act does not extend to Scotland. The sole effect of this

PART II.
 so far as
 relates to
 England,
 trans-
 ferred to
 the High
 Court of
 Criminal
 Justice.

to England, but not otherwise, for the words "one of the superior Courts of Law," or any equivalent expression, wherever the same occur, shall be substituted the "High Court of Criminal Justice;" and such Act, so far as relates to England only, shall be read as though the words "the High Court of Criminal Justice" were contained in the said Act; and the High Court of Criminal Justice shall, from and after the coming into force of this Code, have and possess, and shall alone exercise, all and several the powers and authority theretofore conferred by the said statute upon the superior Courts of Law at Westminster. Nothing in this clause contained shall in any way be deemed to alter or affect any provision of the said Act, so far as the same relates or extends to Ireland.

Appeal to
 lie to the
 Court of
 Criminal
 Appeal.

. 275. There shall be an appeal from the High Court of Criminal Justice, upon any decision given by such Court under the provisions of the last preceding clause, to the Court of Criminal Appeal as constituted by this Code.

clause is to substitute the High Court of Criminal Justice for the common law Courts, the former being obviously the fitting tribunal to deal with questions of purely criminal law, if it should be established.

CHAPTER XII.

PROCEDURE AFTER COMMITTAL OF ACCUSED.

276. THE High Court of Criminal Justice, or any Judge thereof, may, if satisfied upon some reasonable cause shown, in their or his discretion, upon the application by or on behalf, or with the consent in writing of, any person who has been committed to take his trial for any offence against this Code, or against whom any person, under the provisions hereof, has duly entered into recognizances to prefer an Act of Accusation, and upon such terms as to such Court or Judge shall seem just and reasonable, direct and order :

PART II.
Power to the Court or Judge to change place of trial, or direct same to be had before a special, common, or mixed jury, on application of defendant.

- (a) That such person be tried before some Court, to be defined by such Court or Judge, having criminal jurisdiction in respect of the offence charged against such person, other than the Court before which such person has been committed for trial, or before which any person has entered into recognizances to prefer an Act of Accusation as aforesaid.
- (b) That such person be tried either by a special, common, or by a mixed jury as respectively defined by this Code.

PART II.

Subject to
what con-
ditions
such order
may be
made.

277. Such order may, subject to any Rules for the time being in force under the provisions hereof, be made either *ex parte* or by notice given to the opposite side, as to the Court or Judge making the order shall seem fit; and the Court or Judge may require such evidence, by affidavit or otherwise, in support of any such application, as to such Court or Judge may appear reasonable.

By whom,
and how,
notice of
change of
place of
trial to be
given.

278. The person at whose instance a place of trial is changed shall forthwith, upon such order being made, give notice by serving a copy of such order upon the prosecutor, and also upon the proper officer of the Court where, but for such order, the trial is appointed to, or would in the ordinary course, take place, and upon the proper officer of the Court to which the trial is removed.

Where
place of
trial
changed,
deposi-
tions, etc.,
to be
trans-
mitted to
Court in
which
trial
ordered
to take
place.

279. Whenever, under any provision hereof, an order is made to change the original place of trial of any person upon any Act of Accusation, the officer in whose custody the depositions, duplicate summonses, recognizances, and all other documents or copies of documents in relation to the case transmitted to or received by him shall be, shall forthwith transmit the same, together with the Act of Accusation, to the proper officer of the Court in which the trial is ordered to take place, and shall likewise forthwith cause notice in writing to be sent to every witness who has been summoned to attend upon the trial.

What
orders may
be made
where
place of
trial
changed.

280. In any case in which any such order as in the last preceding clause is mentioned is made, the Judge making the same may likewise, by an order under the seal of the Court, direct :—

- (a) That the accused whose place of trial is changed (if in custody) be either admitted to bail as such Judge shall direct ; or be removed in custody, not more than seven days before the time appointed for his trial therein, to the place of custody for persons awaiting trial in the county or place in which he is to be tried, there to be detained until his trial has taken place. PART II.
—
- (b) That all costs, expenses, rewards, or compensation which may be ordered to be paid, or be payable under the provisions of this Code in the case after the trial of the accused, and all other expenses whatever incurred by the county to which any original place of trial shall be transferred in relation to any accused person whose trial shall be so transferred, including all expenses incurred by the said county in maintaining and supporting such person, and carrying into execution the sentence passed upon such accused, be paid and borne by the same persons and in the same manner as the same would have been paid and borne if the trial had taken place, and the sentence passed upon such accused had been carried out, in the county or place originally appointed for the trial of such accused.

281. Whenever two or more persons are jointly accused of any offence, and the consent of the person accused is a condition precedent to the making of any Whenever
the con-
sent of
accused

PART II.

required to any order being made, and more than one person is jointly accused, what consent sufficient.

order under the provisions of this Code, or any Rule of Court made and in force from time to time under the provisions hereof, the consent of any one of such accused persons shall be deemed a sufficient compliance with such condition, unless it shall appear to the Court or Judge that such order would be unjust or cause some material prejudice to the other person or persons jointly charged, in which case the consent of all the persons jointly accused shall first be had and obtained.

Provision for more speedy trial of homicide by persons subject to Mutiny Act.

282. Where any person, subject to any Act for the regulation and discipline of Her Majesty's forces, or the punishment of mutiny and desertion, now or at any time hereafter in force under the authority of Parliament, shall be committed for trial for any murder or manslaughter, committed, or alleged to have been committed, in England or Wales, out of the jurisdiction of the Central Criminal Court, of any other person subject to any such Act, the High Court of Criminal Justice, or a Judge thereof, upon the application of Her Majesty's principal Secretary of State for the War Department, and upon his certificate in writing in form (Z) in the Appendix hereto, or to the like or some other similar effect, duly signed by him, that it would contribute to the maintenance of good order and military discipline if the said accused were to be tried at the Central Criminal Court, shall direct that such accused person be removed to Her Majesty's gaol of Newgate, in the city of London, and be tried at the Central Criminal Court, and such accused shall be removed and tried accordingly; and, if convicted, such accused

may be adjudged by the said Court to be punished according to law, at any place either within the jurisdiction of the Central Criminal Court, or within the county or place where the offence of which such accused is convicted shall have been committed, and such sentence shall be carried out accordingly; and any order for the removal or reception at any prison or otherwise, for the purpose of carrying the provisions of this clause or any punishment lawfully awarded thereunder into effect, may be made by the said Central Criminal Court.*

PART II.

283. From and after the date appointed for this Code coming into force, it shall not be necessary that any indictment be preferred before, or any presentment made by, a grand jury as a condition precedent to any person being placed upon his trial for any crime or offence committed prior to this Code coming into force, or for any offence against this Code, any law, custom, or usage to the contrary notwithstanding; nor shall any grand jurors be summoned or assemble for such purpose.†

Abolition of inquest by grand jury.

284. Provided that no person shall be called upon to plead to any Act of Accusation, nor be placed upon his trial before a jury, either in respect of any crime or offence alleged to have been committed prior to this Code coming into force, or for any offence against this Code, unless:—

No person to be called upon to plead, or to be tried, unless he has been either committed for trial, or prose-

(a) He has first been committed for trial in

* This clause is founded upon, and is substantially in accordance with, 25 & 26 Vict. c. 65, being "An Act for the more speedy trial of certain homicides committed by persons subject to the Mutiny Act," so far as the same relates to England.

† *Vide* Preface, pp. xxxvi.-xl.

PART II.

cutor has entered into recognizances as provided by clause 242.

respect of such crime or offence by a magistrate or justice ;

- (b) The prosecutor has, in any case where a magistrate or justice has refused to commit such accused for trial, duly entered into recognizances in accordance with the provisions prescribed by this Code in that event.*

No person to be apprehended or tried upon any presentment by grand jury for any offence after coming into force of this Code.

285. From and after the coming into force of this Code, it shall not be lawful for any grand jury to present that any person has committed any offence alleged to have been committed since the date of this Code coming into force ; nor shall any person be apprehended, arraigned, or tried upon any presentment made by any grand jury that such person has committed any offence subsequent to the date appointed for the coming into force of this Code.

Pleadings in criminal cases to be drawn as hereby provided.

286. From and after this Code coming into force, all pleadings in criminal cases shall be drawn in accordance with the provisions hereof and not otherwise.

By whom, and how, Act of Accusation to be drawn.

287. Upon the proper officer of the Court in which the trial of any person, under the provisions hereof, is appointed to be had receiving from a magistrate or justice the depositions which such magistrate or justice is, under the provisions hereinbefore contained, required to transmit, it shall be the duty of such officer, in each case, to prepare or cause to be prepared an Act of Accusation as hereinafter provided and defined. Such Act of Accusation, if appointed to be tried before any Court of Oyer and Terminer or

* See note, *ante*, p. 131.

Gaol Delivery, shall be intituled “In the High Court of Criminal Justice,” with the addition of the local description of the Court in which the trial is to be had, and the date of the session of the Court at which such trial is appointed to take place. Or if such trial is appointed to take place before any court of quarter sessions, such Act of Accusation shall be intituled in such court, with the addition of the name of the county or place in or for which such sessions are holden, and the date thereof. Every such Act of Accusation shall be divided into convenient paragraphs, and shall narrate in substance and in consecutive order the facts giving rise to the accusation, and the specific act or acts which the person accused is alleged to have committed in relation thereto, and shall conclude with a statement of the clause or clauses of this Code under which the Accusation against the accused is framed, and against which the accused is alleged to have offended. No Indictment or other or further Accusation shall be necessary in any case; but, subject to the provisions of this Code, every person accused by such Act of Accusation shall be called upon to plead or demur to the same in the manner hereinafter provided.

Form of
Act of
Accusa-
tion.

288. Subject to any Rules of Court to be from time to time made under the authority of this Code, every Act of Accusation shall be in one or other of the forms (AAI—AA) in the Appendix hereto, or to the like or similar effect, the statement of facts and other material statements being varied according to the circumstances of each particular case.

Act of
Accusa-
tion to be
according
to forms
in Ap-
pendix
hereto.

PART II.

No person to be accused in any Act of Accusation of any offence, unless he has either been committed for trial therefor, or the same is disclosed in depositions taken before a magistrate or justice upon hearing of any charge against such accused, unless by leave of Court.

289. No Act of Accusation shall accuse any person (whether he shall have been committed for trial, or in whose case any one has entered into recognizances to prefer an Act of Accusation against him) of any offence, unless (a) the accused has been committed for trial therefor; (b) such accusation is founded, in the opinion of the Court before whom such accused shall be required to plead or be appointed to be tried, upon the evidence disclosed in any depositions taken before a magistrate or justice, under the provisions of this Code, upon the hearing of any charge preferred against such accused person, and duly transmitted to such Court by such magistrate or justice, save and except with the express leave of the said Court first had and obtained. No such leave shall be granted, unless reasonable notice in writing shall have been given of the intention to apply for the same, upon a day and hour to be stated in such notice, to the person affected thereby, and who shall be entitled to be heard upon such application.* Upon any such application, such Court may make such order thereon, and as to the costs of or occasioned thereby, as shall seem to it right and just.

If any accusation be included in any Act of Accusation which is not authorized to be included, accused may apply

290. In any case in which any Act of Accusation shall accuse any person of any offence (a) upon which he has not been committed for trial; (b) which is not founded, in the opinion of the Court before whom such accused shall be required to plead, or be appointed to be tried, upon the evidence disclosed in the depositions aforesaid; (c) which such Court has not granted leave to accuse such person of, under

* The application may now be made behind the back of the accused.

the provisions in the last preceding clause contained ; PART II.
 any person so accused may apply to such Court, to strike out same.
 either before or at the trial, for an order to strike out
 so much of the Act of Accusation as relates to the
 said offence, and such Court may order the same to
 be struck out accordingly, and may make such order
 as to the costs of or occasioned by such application as
 it shall deem right and just. Whenever it is proposed
 to make any such application before the day ap-
 pointed for the trial, notice in writing thereof shall
 be given to the person by whom or at whose
 instance such Act of Accusation is preferred, who
 shall be entitled to be heard thereon.

291. Subject to any provision hereinbefore con- What offences may be included in the same Act of Accusation.
 tained, any number of acts of the like or similar
 character alleged to have been committed by the same
 accused, and each of which if proved would amount
 to a separate offence under the provisions hereof, may
 be included in the same Act of Accusation ; provided
 such offences were each and all committed within a
 period of twelve months the one from the other, but
 not otherwise.

292. The jury may find the accused (or either of What verdict jury may find.
 them, if more than one be jointly charged) guilty
 or not guilty upon the whole Act of Accusation, or
 guilty of one or some and not guilty upon other of
 the offences charged in the Act of Accusation ; or may
 return, in respect of either of the charges, a special
 finding as hereinafter provided.

293. The Court before which any Act of Accusa- Any accused may be ordered to
 tion is appointed to be tried may, if it shall think it
 is conducive to the interests of justice, direct that an

PART II. accused be tried separately upon any one or more of the offences contained in such Act of Accusation. Such order may be made either before or during the trial; and if made during the trial, the offences ordered to be withdrawn shall not be considered by the jury in determining upon any other offences alleged against the accused upon such Act of Accusation; but such accused shall be liable to be afterwards tried separately upon either or any of the offences so ordered to be for the time being withdrawn, and no accused shall, in respect of these, be deemed to have been tried or acquitted by reason only of the same having been withdrawn for the time being from the consideration of the jury under the provisions of this clause.

What acts
in any Act
of Accusa-
tion
amount
to a
separate
offence.

294. Every act, which of itself amounts to a distinct and separate offence under the provisions hereof, contained in any Act of Accusation of which any accused shall be found guilty, shall be deemed for all purposes to be a distinct and separate offence committed by such accused, and such accused person shall be liable to be dealt with in all respects, and any order authorized to be made under the provisions hereof may be made, as though such person had been convicted of each of such offences upon a separate Act of Accusation.

What sen-
tence may
be pro-
nounced
where
accused
convicted
of separate
offences.

295. Whenever any person is convicted of more than one distinct offence, the Court may pass sentence upon him in respect of either or each of such offences; provided that nothing in this Code contained shall be deemed to authorize any Court to sentence any person to more than one *maximum* sentence upon the same facts.

296. It shall be lawful to annex to any Act of Accusation a copy of any document referred to therein, or any list or schedule (hereinafter called an annex), where such a course shall be found most convenient. Any such copy, document, list, or schedule shall be headed according to one or other of the forms ($\frac{W}{W}$) in the Appendix hereto, or as nearly so as circumstances will admit, and shall be deemed to be a part of the Act of Accusation.

PART II.
What may be annexed to an Act of Accusation.

297. No Act of Accusation shall be quashed or held bad or insufficient by reason of the same, or any annex thereto, not being in accordance with the forms hereby prescribed, or by reason of any statement of facts contained therein being defective or uncertain, or by reason of any variance between any statement in, or annex to, any Act of Accusation and the evidence given upon the trial in support of the accusation; but in any case where any such defect or uncertainty shall exist, it shall be competent for any accused person, or his solicitor or counsel, to apply at any time before the commencement of the trial, either to the Judge before whom the trial is intended to be had, or to any Judge of the High Court of Criminal Justice sitting in Court or Chambers, for an order directing that the Act of Accusation be amended, or that further particulars be given (both or either); and any such Judge may, upon any such application, make any order in reference thereto, and as to the costs of and occasioned by such application, as he shall in his discretion think fit.

Act of Accusation not to be void or insufficient by reason of defect of form or variance between it and evidence given on trial.

Power to amend.

298. In any case where a Judge shall make an order Trial may

PART II.
 be postponed,
 with consent of
 accused,
 where
 amendment
 ordered.

to amend any Act of Accusation, or for the delivery of particulars, under the provisions of the last preceding clause, it shall be lawful for such Judge, if he shall think that the justice of the case so requires, with the consent of the accused, to direct that the trial of any accused person be postponed until a reasonable time after such amendment shall have been made or such particulars delivered; and such trial shall be postponed accordingly.

Owner of
 property
 need not
 be stated
 in Act of
 Accusa-
 tion.

299. It shall not be necessary, in any Act of Accusation in respect of any offence against this Code which consists in the doing anything with or to any property whatsoever, to state to whom such property belonged; but upon the trial of any person for any such offence, evidence may nevertheless be given to show the ownership of the said property, and such evidence shall be given, in any case in which it is necessary to do so, in order to establish the guilt of the person accused.*

In any Act
 of Accusa-
 tion for
 offence
 in relation
 to written
 instru-
 ment, same
 need not
 be set out.

300. In any Act of Accusation for any offence in relation to any instrument, whether written, printed, or otherwise rendered legible, it shall be sufficient to describe such instrument by any name or designation by which the same is commonly or usually known, or by the purport thereof, without setting out any copy thereof, or otherwise describing the same; provided that nothing in this clause contained shall be construed to prevent any copy of any such instru-

* Various enactments have been passed in modern times with a view to remove difficulties in stating, in criminal pleadings, the names of the owners of property in the case of partners, joint owners, trustees, and public and other bodies. This clause is designed to carry this reformation to its legitimate and simplest conclusion.

ment being annexed to any Act of Accusation, or to affect the right of any accused person to be furnished with any particulars, copy, or otherwise to which he is entitled under any provision of this Code.

PART II.

301. Every Act of Accusation shall, subject to any Rules of Court to be from time to time made and in force under the provisions hereof, be either engrossed or printed; and every prosecutor or accused person affected thereby, or the solicitor or counsel of any such prosecutor or accused person duly authorized in that behalf, shall be entitled, upon application to the proper officer having charge of the same (but subject to such Rules as shall be from time to time prescribed under the authority hereof), to inspect and be furnished with a copy of the same, and with a copy also of the panel of the jury from whom are to be selected the jury to try such Act of Accusation; and, in any case in which the Act of Accusation is printed, shall be entitled to be furnished with such additional number of printed copies, not exceeding three in all, as he may reasonably require. It shall not be lawful to make any charge for supplying any such printed copies to any accused person, or his counsel or solicitor.*

Act of Accusation to be engrossed or printed, and prosecutor or accused to be entitled to inspect and be furnished with copy or copies of same and jury panel.

302. Whenever it is proposed, upon the trial of an

Notice to

* Any person charged with treason is entitled by law to a copy of the indictment preferred against him, and of the panel of the jury who are to try him (7 Anne, c. 21, and 6 Geo. 4, c. 50, s. 21). Upon any trial for felony, an accused is not entitled, nor is he in general permitted, to have a copy of the indictment. In every case of misdemeanour he is entitled to a copy, which is, however, only supplied on payment.

There is absolutely no reason for the distinction, and the most elementary principles of justice require that an accused should, in every case, have a copy of the indictment, and know with certainty what are the precise charges upon which he is to be tried.

PART II. Act of Accusation, to call any witness on the part of the prosecution, who was not examined before a magistrate or justice in the preliminary inquiry, a notice in writing shall be served, a reasonable time before the trial, upon every accused in whose trial such further evidence is proposed to be adduced, either personally, or if personal service cannot be effected, by leaving the same with some adult person at the house where such accused resides. Such notice shall specify the names, place of residence, and occupation or description of every such additional witness proposed to be called at the trial, and shall set forth the substance of the evidence to be given by every such witness.

No such additional witness to be called, unless notice given.

303. No witness shall, unless called by or with the consent of the Court, be examined for the prosecution, upon the trial of any Act of Accusation, who was not examined in the preliminary inquiry before a magistrate or justice, unless such notice has been duly given in accordance with the provisions of the last preceding clause.*

In what

304. If, before or during the trial of any person, it

* The present practice is to give notice to the accused, when it is intended to adduce at the trial witnesses not called before the magistrate, in cases of felony, and frequently in cases of misdemeanour also; but there is no imperative rule, and no power to exclude the evidence, even where notice has been withheld intentionally. In the case of any person charged with high treason, a list of the witnesses intended to be called by the Crown *must* be given to the accused ten days before the trial (7 Anne, c. 21, & 6 Geo. 4, c. 50, s. 21). It is obviously only right that, upon every trial, an accused should know who is to be called against him, so that he may inquire into the character and antecedents of any proposed witness, or give instructions to counsel for the purposes of cross-examination, which cannot be properly given if a witness be unexpectedly sprung upon an accused in the course of the trial.

shall appear : (a) that the accused is likely to be prejudiced or materially misled by reason of any insufficiency or uncertainty in any Act of Accusation, or of any annex thereto, or any variance between the statements contained in any Act of Accusation, or any annex thereto, and the evidence given upon the trial ; or (b) that any accused person has been otherwise taken by surprise by any evidence given or proposed to be given ; or (c) that for any reason the purposes of justice so require ; it shall be lawful for the Judge, before or at such trial, upon the application or with the consent of the person accused, to order an adjournment of the trial for such time, and to make such order as to costs or otherwise, and as to admitting the accused to bail, as he may think fit.

PART II.
cases trial
may be
postponed
upon the
application
of the
accused.

305. Any Judge of the High Court of Criminal Justice acting as such, under the provisions hereof, in or for the county of any city or town corporate in England other than the county of the city of London, may, upon the application of any accused person (but not otherwise),* if he shall be of opinion that the ends of justice will be thereby furthered, direct that any Act of Accusation against any such accused be tried by and before a jury of the county next adjoining to the county of such city or town corporate ; and the same shall be tried accordingly.

In certain
cases trial
may be
directed to
take place
in ad-
joining
county.

306. For the purpose of the last preceding clause the county of York shall be considered as the next

Definition
of ad-
joining
county.

* This clause is founded upon 38 Geo. 3, c. 52, s. 1. The statute, however, gives power to change the place of trial upon the application either of the prosecutor or defendant. I submit that this is wrong in principle, and that the place of trial should only be changed at the instance of the accused, and for good cause shown.

PART II. adjoining county to the county of the town of Kingston-upon-Hull, and the county of Northumberland as the next adjoining county to the county of the town of Newcastle-upon-Tyne.

CHAPTER XIII.

TRIAL OF ACCUSED PERSONS.

307. ON the first day of any Session held for the trial of persons accused of offences under the provisions of this Code, every person who has been committed to take his trial thereat, shall, if in custody, be brought to the bar of the Court before which he is to be tried, or if on bail, shall surrender and appear in such Court, and every person against whom any person has duly entered into recognizances to prefer an Act of Accusation in accordance with the provisions of this Code shall appear in like manner, and the proper officer shall then inquire separately of each of the said persons by name if he, or any person appointed on his behalf for that purpose, has had a copy of the Act of Accusation, and of the depositions taken against him, and of the panel from which the jurors to try him are to be selected. And if it shall appear that any or either of such persons has not received any such copy, or that the same has not been supplied to any person duly authorized in that behalf; or if, in any case where a copy has been in fact supplied, it shall appear to the Court that it is for any reason just or expedient that a further copy should be supplied to any accused, a copy thereof

PART II.

All persons accused to appear or be brought before the Court to plead.

Right to copy of Act of Accusation and depositions, where same not previously supplied.

PART II. shall be forthwith supplied without charge to such accused, or to such person as any such accused person shall authorize to receive the same.

Challenge
of array.

308. When the officer of the Court has addressed the persons severally accused as lastly hereinbefore provided, either the prosecutor or the accused may challenge the array of jurors appointed to try the same. Such challenge shall be in writing in the form (CC) in the Appendix hereto, or some other like or similar form, and may be made upon any or either of the following grounds, viz. :

Grounds
upon
which
same may
be made.

- (a) That the sheriff, by whom the panel of jurors is returned, is the prosecutor upon the Act of Accusation, or the party aggrieved ;
- (b) That such sheriff was, at the time of the summoning of the jury or return of the panel, of actual affinity to, or connected by marriage with, the prosecutor or party aggrieved, or the accused ;
- (c) That the sheriff has included in the panel jurors in consequence of a request either of the prosecutor or party aggrieved, or of the accused, or at the request of some person more favourable to the one side than the other ;
- (d) That there is any litigation pending between the sheriff and the prosecutor or accused ; or that the sheriff, or the bailiff who made the return, is under the distress or influence of the prosecutor or accused, or has any pecuniary interest in the result

of the trial of the Act of Accusation, or PART II.
 has any personal bias against the prosecutor or accused; or is counsel, solicitor, partner, or servant of, or otherwise similarly interested in, either the prosecutor or the accused; or is a subscriber to or in, or member of, any corporation, society, or association of persons who are the prosecutors or parties aggrieved;

- (e) That, from any other cause or upon any other ground, which must be specifically stated by the prosecutor or accused who alleges the same, the panel has not, in fact or by presumption, been fairly or impartially returned.*

309. If either party challenge the array, the other side may either admit or deny the truth of the challenge, or may demur thereto. Such demurrer shall be in writing, in the form (DD) in the Appendix hereto, or some other like or similar form; and the Court shall give judgment upon such demurrer, after hearing any argument thereon that may be addressed to it on either side. No joinder in demurrer shall be necessary.

Challenge
may be
admitted
or de-
murred to.
Form of
demurrer.

310. If the truth of the challenge be admitted, or if, upon any demurrer to a challenge made to the array, judgment is given in favour of such challenge, the Court shall order a new panel to be returned, by

If truth
of chal-
lenge
admitted,
or de-
murrer
allowed,

* I believe these sub-clauses fairly express in substance the several grounds upon which a challenge to the array may be now lawfully made. (*Vide* Bruce's "Archbold's Crim. Practice," in which the authorities are collected at pp. 156-161.)

PART II. such person as it shall direct, and shall postpone the trial of the accused until such new panel is returned.

Court to
direct new
panel to
be re-
turned.

If truth of
challenge
disputed,
triers to be
appointed.

If triers
find in
favour of
challenge,
or are
unable to
agree,
Court to
direct new
panel to
be re-
turned.

311. If the truth of the challenge is disputed, the Court shall appoint two indifferent persons as triers, who shall be sworn and charged to try whether the array be an impartial or a favourable one. If such triers find in favour of the challenge, or are unable, after what appears to the Court to be a reasonable time for that purpose, to agree, the Court shall direct a new panel to be returned; if the triers find against the challenge, the same shall be disallowed, but the party making it shall notwithstanding be entitled to object to individual jurors, as they severally appear to be sworn in manner hereinafter provided.

Bench
warrant.

312. When any person, not being in custody, shall fail to appear in order to plead to any Act of Accusation, having been either committed for trial, or duly served with notice to appear and plead thereto under the provisions hereof, or having been admitted to bail by the Court shall fail to appear according to the conditions of his recognizance (unless his absence shall be accounted for to the satisfaction of the Court before which such person ought to have appeared), such Court, or any two justices forming part of any such Court, may issue a warrant for the apprehension of such person, and such warrant may be executed in any part of the United Kingdom of Great Britain and Ireland, by any constable or other officer of the peace, whether holding the warrant or not; and no such warrant shall require to be backed, nor shall any endorsement thereon or further authority be required as a condition precedent to the execution

of such warrant. Any such warrant may be in the form (BW) in the Appendix hereto, or as nearly so as circumstances will admit. PART II.

313. If the person so failing to appear has been admitted to bail, the recognizance of such person, and of any surety or sureties bound for his appearance, shall be estreated. Estreating recog-
nizances.

314. Any accused called upon to plead to any Act of Accusation may, instead of pleading "Guilty" or "Not guilty," plead in abatement or bar thereto, upon either of the following grounds, viz. : Pleas in
abatement
or bar.

(a) That the Court has not jurisdiction over the offence or the offender. Want of
jurisdic-
tion.

If, upon argument, judgment is given upon such plea in favour of the accused, the Court may either direct the accused to be discharged as to such accusation, or may direct the Act of Accusation to be tried before any Court in England or Wales which has jurisdiction over the offence or offender, and may make any other order or give any direction incident thereto or necessary to carry out the same.

(b) That the accused has been previously convicted or acquitted, as the case may be, of the same offence. Autrefois
convict or
acquitt.

Upon any such plea as last mentioned being pleaded, the Court shall empanel a jury to try whether such plea is true or not in fact; or such question may, with the consent of the accused, be tried before the Court itself, without a jury. If the Court or jury shall thereupon find that the plea is not proved, the accused shall be required to plead How any
such plea
to be tried.

PART II. to the Act of Accusation, and shall be tried in the usual way. If the Court or jury find the plea proved, the accused shall be forthwith discharged as to such offence.

Special
plea in
case of
libel.

- (c) In the case of any person accused of libel, he may plead that the matter published by him was true, and that it was for the public benefit that the matters complained of should be published in the manner in which they were published. Every such plea as in this sub-clause mentioned must be in writing, and must set forth the particular fact or facts by reason of which it is alleged that it was for the public good that such matters should be so published, and the defendant must give such notice to the prosecutor of his intention to plead it, as shall be required under any Rules of Court for the time being in force under the provisions hereof, in default of which notice the Court may refuse to permit the plea to be pleaded, or may adjourn the trial of the case upon such terms as it thinks fit. The defendant may in addition to such plea plead that he is not guilty. The prosecutor may reply to such plea that he denies its truth.

Prosecu-
tor may
apply for
particu-
lars.

315. When notice is given to the prosecutor of the defendant's intention to plead any such plea, he may apply to any Judge of the High Court of Criminal Justice for an order for particulars, and an order may be made directing such particulars to be given.

316. Whenever any person charged upon any Act of Accusation under the provisions of this Code pleads "Not guilty," a jury, special, common, or mixed, according as is by this Code provided, shall be empanelled to try him. If any accused person wilfully refuses to plead, the Court shall proceed in the same manner as if he had pleaded "Not guilty."

PART II.

Course to
be pursued
where
accused
pleads
"Not
guilty."

317. If, upon any person being called upon to plead to any Act of Accusation, he appears to be of unsound mind, a jury shall be empanelled to try whether or not he is capable of understanding the proceedings, and whether or not he have sufficient mental capacity to take such part therein as is necessary for his defence. If the jury find that such person is capable of understanding the proceedings and has such mental capacity, the trial shall proceed in the usual way.

If a defen-
dant called
upon to
plead ap-
pear to be
of unsound
mind, what
inquiry to
be held.

318. If the jury find that such person, by reason of defective mental power, is not capable of understanding the proceedings, or that he has not sufficient mental capacity to take such part therein as is necessary for his defence, the Court shall direct the jury to acquit such person of the charge preferred against him; and upon such person being so acquitted, the Court shall order such person to be detained in custody during Her Majesty's pleasure; and such person shall be so detained in such place, and under such restrictions, and for such period, as shall be from time to time authorized by law in that behalf.

If found
by jury to
be of un-
sound
mind,
may be
detained
during
Her
Majesty's
pleasure.

319. Upon any inquiry under the provisions of the last preceding clauses, the person accused shall, if he

Such de-
fendant
entitled to

PART II. or his friends so desire, be entitled to be represented by counsel, and the accused and his counsel shall have all the same rights and privileges, as regards the question which the jury have to determine, as are hereby given to accused persons and their counsel upon the trial of any Act of Accusation.

If accused stands mute, jury to be sworn to inquire cause.

If jury find that accused is wilfully mute, trial to proceed as upon plea of "Not guilty."

320. If an accused when required to plead stands mute, the Court shall cause a jury, composed of any twelve indifferent persons then present, to be sworn to inquire whether such accused either understands or can be made to understand the accusation made against him, and whether he is competent to make his answer and defence thereto. If the jury find that such person is wilfully mute, and that he is able to understand the accusation made against him, and that he is competent to make his answer and defence thereto, the Court shall proceed as though he had pleaded "Not guilty."

If jury find that accused is mute, but can be made to understand proceedings and make full defence by means of an interpreter, same to be provided.

321. If, on the other hand, the jury find that the accused is mute because he is unable to speak, but that he can be made to understand the accusation, and enabled to make his full answer and defence thereto, by means of an interpreter or otherwise, the Court shall cause a competent interpreter to be provided for that purpose, and may postpone the trial of such accused for a reasonable time for that purpose, and, if it shall think fit, admit the accused to bail meanwhile, either in his own recognizance, or with or without a surety or sureties. Every such interpreter, before being permitted to interpret in such case, shall first make oath that he is fully competent for the purpose, and that he will well and

truly interpret the evidence and proceedings in the case. PART II.

322. If the jury find that the accused does not, and cannot, by reason of mental infirmity, be made to, understand the accusation and make his answer and defence thereto, he shall be dealt with in all respects as is hereinbefore enacted in the case of accused persons who are found by a jury to be of unsound mind. Course if jury find that accused is unable to understand proceedings by reason of mental infirmity.

323. Every accused person as to whom any jury is sworn to inquire why such person stands mute shall be entitled, upon such inquiry, to be represented by counsel, who shall have, on behalf of such person, all the same rights and privileges, as regards the question which the jury have to determine, as are hereby given to counsel on behalf of accused persons upon the trial of any Act of Accusation. Accused standing mute to be entitled to assistance of counsel in any inquiry under the foregoing clauses.

324. Upon any accused person who has pleaded "Not guilty" appearing at the bar to be tried, the proper officer of the Court shall, in the presence and hearing of such accused person, call over the names of the jurors whom it is proposed shall serve as jurors for the purpose of trying such person, and shall immediately before so doing inform such person that he is about so to do, and, furthermore, that if he has any lawful objection to make to any of the said proposed jurors, he is entitled to make the same as the said jurors severally appear to be sworn and before they are sworn. Jurors to be called in presence and hearing of accused, who is to be informed of his right to object to any proposed juror.

325. Every person who is to be tried for any offence upon conviction for which he is liable to be sentenced to penal servitude, shall be entitled to object to Challenges of individual jurors.

PART II. twenty jurors without giving any reason for so doing.
 — Every person who is to be tried for any offence whatever, other than an offence for which he is liable, upon conviction, to be sentenced to penal servitude, shall be entitled to challenge seven jurors without giving any reason for so doing. No prosecutor upon any Act of Accusation shall be entitled to object to any juror, or to require any juror to stand aside, except upon one or other of the grounds in the next succeeding clause mentioned.* Every person who is to be tried for any offence, and every prosecutor upon any Act of Accusation, shall be entitled to object to any number of jurors upon any or either of the following grounds, viz. :

Grounds
upon
which
same may
be made.

(i.) That the juror objected to :

(a) Is a peer or lord of Parliament ;

(b) Is either not duly qualified, or is disqualified

* Every person indicted for high treason is now entitled to challenge peremptorily, *i.e.* without assigning any cause, thirty-five jurors (2 Hawk. P. C. c. 43, s. 8, and 1 & 2 P. & M. c. 10, s. 7) ; except the treason charged is compassing the death of the sovereign by certain overt acts, as to which see 39 & 40 Geo. 3. c. 93, and 5 & 6 Vict. c. 51. In the excepted cases of treason, in murder, and all other felonies, the accused is permitted to challenge twenty jurors peremptorily (6 Geo. 4, c. 50, s. 29) ; and in Ireland this is also the limit even in cases of treason (*vide* 9 Geo. 4, c. 54, s. 9). In cases of misdemeanour, no right of peremptory challenge exists at all (Co. Litt. 156). Challenges for cause, *i.e.* upon some sufficient ground stated and established, may be made to any number in all criminal trials (*vide* 2 Hawk. P. C. 43 ; Bac. Abr., titles "Challenge" and "Juries ;" and 4 Bl. Com. 352).

The prosecution has, in a limited sense, no right of *peremptory* challenge (6 Geo. 4, c. 50, s. 26, repealing and re-enacting 33 Edw. 1, st. 4. But see *Mansell v. the Queen* (in error), 8 Ell. and Bl. 54). It may, however, direct any number of jurors to "stand aside" until the whole panel has been gone through, and only if there do not afterwards remain sufficient jurors to try the accused can the Crown be compelled to show cause of challenge (2 Hawk. P. C. c. 43, s. 3 ; 2 Hale, P. C. 271). The Crown possesses this privilege both in trials for felony and misdemeanour (3 Harg. St. Tr. 519).

by law, to serve as juror in a criminal trial; PART II.

(c) Is not indifferent between the prosecution and the accused: which partiality may be either actually shown to exist, or may be presumed from the juror being of affinity to, or connected by marriage with, or in the employment of, or in any wise personally interested in either party, or in the result of the trial.

(ii.) In any case in which the prosecutor or accused believes, upon fairly reasonable grounds, that the juror objected to will, from any cause, be likely to act under some prejudice or undue influence, whether or not such belief may be a mistaken one.

(iii.) For any cause, in the juror objected to, which is in the case of a sheriff hereinbefore declared to be ground of challenge to the array.*

326. If the ground of challenge to any juror is either admitted or apparent, or in any case in which, a juror being challenged by an accused, the Court shall think fit to allow the challenge, the same shall be at once allowed and the juror set aside. In any other case, the Court shall appoint two indifferent persons, who shall be sworn as triers, and charged to try whether the ground of challenge is true or not. Witnesses may be called to support or defeat the challenge, and the juror objected to may be examined orally, on oath, as to his qualification or

When challenge to be allowed at once.

In other cases triers to be appointed.

* For the principal authorities upon the law of challenge for cause, see those cited in previous note; also Bruce's "Archbold's Crim. Practice," pp. 162, 163.

PART II. the leaning of his affection, or as to whether he has expressed any opinion hostile to either side in relation to the trial.* If the triers find in favour of the challenge, or are unable, after what appears to the Court to be a reasonable time for that purpose, to agree, the challenge shall be allowed and the juror set aside.

If panel exhausted by challenges, Court to direct a new panel to be returned.

327. If the panel be so far exhausted by challenges that a full jury is not left, the Court shall order a new panel to be returned, by such person as it shall direct; and the prosecutor and accused shall have respectively the same rights, in relation to the new panel so returned, both as regards challenging the array and challenges either peremptory or for cause, as are hereby severally enacted in the case of the original panel.

Court may excuse juror who is obviously unfit to act.

328. The Court may excuse any juror, when called on the panel and before he is sworn, without challenge, who is obviously unfit to perform his duty as such from physical or mental infirmity.

Accused how dealt with when new panel directed.

329. In any case in which the Court shall direct a new panel to be returned, and the trial of any accused person to be postponed in consequence, it shall, if the accused was previously admitted to bail and duly surrendered to take his trial, again admit the accused to bail; and, in any other case, shall, in its discretion, either recommit the accused to prison or admit him to bail, either in his own recognizance only, or with a surety or sureties, to appear at the time and place to which the trial is adjourned.

* This last question cannot, it seems, now be asked of a juror challenged for cause (2 Hawk. P. C. 43).

330. Any Court, before whom any accused person is appointed to be tried under the provisions hereof, may, upon the application of the prosecutor, and with the consent of the person accused, permit the prosecution against such person to be withdrawn, and may discharge the prosecutor and witnesses from further attendance, and may grant to such accused a certificate stating the fact of such withdrawal, and such certificate shall to all intents and purposes have and be of the same force and effect as if a verdict of acquittal had been pronounced in favour of such accused.

PART II.

In what cases a prosecution may be withdrawn.

331. Any person who shall (unless he shall be duly found unfit to plead by reason of mental incapacity as hereby provided) plead "Guilty" to any Act of Accusation under the provisions of this Code, shall, upon such plea being duly recorded, be deemed to have been convicted of the offence to which he so pleads guilty. The Court before allowing a plea of "Guilty" to be recorded shall be satisfied that the accused rightly comprehends the effect of his plea.

Plea of "Guilty" equivalent to conviction.

332. If any Act of Accusation does not state, either originally or by any amendment authorized to be made under the provisions hereof, any offence against this Code, it may be quashed, either upon a motion made before the person accused thereby pleads, or on a motion made in arrest of judgment. A written statement of every such motion may be delivered to the officer of the Court by or on behalf of such accused, and shall in that case be entered upon the record; or may be directed by the Court to be entered upon the record, on behalf of such accused,

In what case an Act of Accusation may be quashed.

PART II. in any case in which no such motion shall be made for that purpose by or on behalf of an accused, if it shall appear to the Court just so to do. Any such statement may be in the form (MQ) in the Appendix hereto, or some other like or similar form.

Form of objection.

Giving accused in charge to the jury.

333. When a full jury has been empanelled and sworn, the accused being placed at the bar or present in Court, the proper officer of the Court shall give the accused in charge of the jury in the words following:—"Gentlemen of the jury, the accused [*naming him or them by his or their christian and surnames as stated in the Act of Accusation*] is [*or are*] charged [*stating the substance of the Act of Accusation or so much thereof as the jury are then to inquire into*]. To the Act of Accusation the accused has [*or have*] pleaded that he [*or they*] is [*or are*] not guilty: your duty, therefore, is to inquire whether he [*or they*] be guilty or not guilty, and to hearken to the evidence."*

Witnesses may be ordered out of Court during trial.

334. Upon the trial of any Act of Accusation, if application shall be made to the Court, by or on behalf of any prosecutor or accused person, that the witnesses on both sides be and remain out of the Court, each until he is required to give evidence, the Court shall so direct, and such witnesses shall be out of Court accordingly, unless the Court shall be of opinion, for some reasonable cause, that the interests of justice might be thereby prejudiced, in which case no such order shall be made; but nothing in this clause contained shall be deemed to give any Court power to direct or cause any accused person to be

* This is the mode of giving an accused in charge to the jury at present in all cases of felony. In cases of misdemeanour the jury are not charged.

out of Court during the progress of his trial. Every accused person shall be entitled to be present in Court during the whole of his trial; but the Court before whom he is tried may permit an accused to be out of Court during any portion of the trial if he shall so desire and the Court shall think fit to so permit.

335. It shall be the duty of the prosecution to lay before the jury all and every trustworthy and material evidence of which the prosecution have cognizance which it is in their power reasonably to adduce, whether such evidence be relevant to the main question whether any accused person has committed any offence alleged against him, or relevant merely to any circumstance of legal justification or excuse.*

PART II.

Prosecution to lay before the jury all the trustworthy evidence of which they have cognizance.

336. The evidence for the prosecution and defence respectively shall, save as is by this Code otherwise expressly enacted, be taken according to the rules of evidence in force in relation to criminal trials at the date of this Code coming into operation: provided that it shall be lawful for the Court before whom any accused person is tried, if it shall think it conducive to the interests of justice so to do, to require, or compel, by means of a summons under the seal of the Court, which shall be served in such manner as the Court shall direct, the attendance of any material witness whom it is not intended to call, or who is not called, on either side, and to examine, or cause to be examined, such witness at any stage of the pro-

Court may require any material witness, not examined on either side in any trial, to attend and be examined; and may make any order in reference thereto, as may be reasonable and just.

* Technically, the Crown is prosecutor in every criminal case. The Sovereign is, by a maxim of law, interested equally in the punishment of guilt and the protection of innocence. This clause is submitted as the logical deduction from these two propositions.

PART II. ceedings, and in any way which shall be best calculated to elicit the truth and further the ends of justice ; and, if necessary, to adjourn the further hearing of the case, and make such order as to the costs occasioned thereby, and as to any conduct money to be paid to any witness whom the Court shall direct to be served with a summons under the provisions of this clause, as shall be just ; and may admit the accused to bail, either in his own recognizances, or with or without a surety or sureties, conditioned for his appearance ; and may make such order as to the side by which such witness shall be cross-examined and re-examined respectively, and as to the addresses to be made to the jury on his evidence, if it shall be necessary so to do, as shall be reasonable and just.

Accused competent and compellable to be examined on his trial.

337. Upon every trial under the provisions of this Code, every accused person shall be competent and compellable to be examined in the same manner (subject as hereinafter provided) as any ordinary person, either by or on behalf of the prosecution, or on his own behalf, or on behalf of any person jointly accused with him.*

When accused may be examined by the prosecution.

338. Whenever any accused person is examined by or on behalf of the prosecution, such examination may be taken at any time prior to the close of the evidence for the prosecution. The accused shall in that case be examined in the same manner as the witnesses called for the prosecution, save and except as is hereinafter specially provided. Such accused, if he shall not be represented by counsel, shall, at the close of

* *Vide* Preface, pp. xlii.-lx.

such examination, be informed by the officer of the Court before whom he is tried that he is at liberty, and that it is his right, to add thereto any further statement or explanation touching the offence of which he is accused, or any answer he has given or statement he has made in his examination, that he may desire. If two or more persons are jointly accused and tried together, each of such accused as is not represented by counsel shall in turn be informed by the officer of the Court, at the close of the examination of any person accused jointly with him, that he is at liberty, and that it is his right to put any question he may desire to the accused who has been examined as aforesaid in any wise relating to the offence of which they are jointly accused, or any answer given or statement made by either of such accused in the course of, or subsequent to, his examination. And it shall be the express duty of the Judge presiding at such trial, to direct the attention of any accused who is not represented by counsel, or, if there be more than one person jointly accused, of each of them in turn who is not so represented, to any matter in relation to the evidence given against him or them or to any statement made by either of them, in the course of or subsequent to the examination of either of them, requiring explanation, or which appears to tell against such accused or either of them, and to invite the accused or either of them, each in turn, to make any statement or explanation he may desire in reference thereto.

Duty of the Judge in reference to the examination of an accused who is not defended by counsel.

339. If the accused, or if more than one, either of Provision

PART II. them, is represented by counsel upon his trial, such
 where ac- counsel shall be entitled, at the close of the examina-
 cused re- tion of an accused who has been called and examined
 presented by counsel by or on behalf of the prosecution, to put any question
 on his trial. to such accused person having relation to the matter
 under investigation, or to any answer given by the
 accused, or statement made by him, in the course of or
 subsequent to his examination; and such accused
 may afterwards be re-examined, by or on behalf of
 the prosecution, upon any answer given or state-
 ment made in the course of such examination by
 counsel, and may likewise make any further state-
 ment or explanation in relation thereto that he may
 desire.

Accused
 may be
 examined
 on his own
 behalf, or
 on behalf
 of any
 person
 jointly
 accused
 with him.

340. In any trial in which any accused person is
 not examined by or on behalf of the prosecution, he
 may be examined on his own behalf, and on behalf of
 any person jointly accused with him, both or either,
 and may in either of such cases be cross-examined by
 the prosecution, and re-examined by his own counsel,
 and by or on behalf of any person jointly accused with
 him. If any accused who is examined on his own
 behalf is not represented by counsel, he shall be at
 liberty, after he has been cross-examined, to make
 any further statement or explanation he may desire
 of or in relation to any statement made, or answer
 given by him. In every case in which any accused
 is examined, either on his own behalf or on behalf of
 any person jointly accused with him, if either of
 them is not represented by counsel, the duty of the
 Judge shall, in relation to such accused as is not so
 represented, be similar to that hereinbefore provided
 in the case of accused persons not represented by

Duty of
 the Judge
 in that
 case.

counsel who are examined by or on behalf of the prosecution. PART II.

341. It shall not, in any case, be lawful to administer to, or for any accused person, when examined upon his trial, either by or on behalf of the prosecution, or on his own behalf, or on behalf of any person jointly accused with him, to take, any oath or affirmation; or to put to any such accused person any question with a view to impeaching his credit generally; but the questions put shall, in either of the said cases, be such only as are reasonably calculated to elicit the whole knowledge of the accused in relation to the particular offence then being tried. It shall be the express duty of the Judge presiding at any such trial to protect any accused person whilst under examination, and to prevent any question being put or answered which is either prohibited or which is not expressly authorized by the provisions of this Code.

No oath to be administered to an accused when examined upon his trial.

Judge to protect accused from any unauthorized examination.

342. Provided that nothing herein contained shall be deemed to extend to or prevent an oath being administered to or taken by any person who shall have first pleaded guilty to the offence of which he is charged, or as to whom the prosecution shall withdraw and offer no evidence, and who shall in either of the said cases be called and examined as a witness either for the prosecution or on behalf of any accused person; or to prevent any question being put to such person which might be lawfully put to such person if he were called as a witness in the case, and had not been accused of complicity in the offence then under investigation.

Nothing herein contained to prevent a person who has pleaded guilty, or as to whom prosecution withdrawn, from being sworn and examined in the same manner as any ordinary witness.

343. In any case in which the statement or deposi- Provision

PART II. tion of any person has been taken by or before any
for read- magistrate or justice, under any enactment or pro-
ing, upon vision in this Code contained, if such person shall
trial, depo- afterwards die, or be so ill, either physically or
sition of mentally, as to be unable to travel, or to attend
any person unable to give evidence upon the trial of any accused
unable to person for any offence against this Code; or if such
be present person shall be kept away from attending to give
or kept away. evidence upon such trial, by or on behalf of the
prosecutor or accused;—upon proof of either of the
said facts to the satisfaction of the Court before
whom such accused is tried, and that such state-
ment or deposition was either taken in the presence
and hearing of the person against whom such state-
ment or deposition operates, or that such person
was afforded reasonable opportunity of being present
at the taking thereof, and wilfully refused or neg-
lected to attend; and that such person, or his counsel
or solicitor, was afforded full opportunity of cross-
examining the witness in accordance with the
provisions in that behalf by this Code enacted, or
might have been afforded such opportunity had he
chosen to attend, either personally or by counsel or
solicitor; it shall be lawful to read such statement or
deposition in evidence, either for or against the
accused, without further proof thereof, if the same
purports to be signed or marked by the person
making the same, and to be signed by the magistrate
or justice by or before whom the same purports to
have been taken or read over, signed or marked;
unless it shall be proved to such Court that such
deposition was not in fact taken in the presence and
hearing of the person against whom the same is

taken, or that such person was not afforded reasonable opportunity of being present at the taking thereof, and wilfully refused or neglected to attend; or that such person, or his counsel or solicitor, was not afforded full opportunity of cross-examining such witness; or that such deposition was not in fact signed or marked by such witness, and signed by such magistrate or justice, or was otherwise, in any material respect, not taken in accordance with the provisions hereof. Provided that the fact only that any person, whose statement or deposition shall be so read upon the trial of any person under the provisions of this Code, was either not cross-examined, or was not cross-examined upon any particular point, shall not prevent any witness being called, or evidence adduced which it would otherwise be lawful to call or adduce, for the purpose of contradicting or explaining anything contained in any such statement or deposition, or of giving evidence of any fact which might have been elicited by cross-examination of the person whose statement or deposition has been so taken and read as aforesaid.*

* This clause is founded upon 11 & 12 Vict. c. 42, s. 17, and 30 & 31 Vict. c. 35, s. 6. The proviso, however, is entirely new, and is designed to remedy an injustice that may arise under the present law of evidence. It is a rule that a witness may not be called to contradict evidence given by the opposite side, except upon evidence given in chief, or matter upon which the witness has been expressly cross-examined.

As every witness appearing and giving evidence upon any trial may, consistently with the rules of evidence, be subjected to cross-examination, both upon points upon which he has been cross-examined before a magistrate or justice, and upon any other points that counsel upon the trial may think necessary, it follows that injustice must result when the deposition of a witness unable to appear upon the trial is read, and evidence (which is forthcoming) is not permitted to be given in reply, to explain or contradict anything contained in such deposition, by reason only

PART II.

Trial may be postponed from day to day, or longer, when authorized by this Code.

Court may direct the jury, pending adjournment, to be kept together under charge of an officer of the Court, or to return to their homes.

Officer of Court in charge of jury during any adjournment to be sworn.

344. In any case in which a trial cannot be concluded on the same day on which it began, the Court may adjourn the same from day to day, or, where an adjournment is authorized under any of the provisions of this Code, for such time as shall be reasonably necessary; and may in either case, in its discretion, direct that the jury be either kept together during the night, or during any adjournment, in some suitable place under the charge of an officer of the Court, or allowed to return to their homes for the night—in the latter case being first admonished and sworn not to converse with any person whatsoever on the subject of the trial, until it has concluded and they have delivered their verdict.

345. If the Court direct the jury to be kept together under the charge of an officer of the Court, such officer shall in every case take an oath, in such form as shall be prescribed by Rules of Court under the authority hereof, to observe and perform the duty required of him. No juror shall in such case be permitted to separate himself from the others, nor shall any person whatsoever be permitted to speak to or communicate with the said jury, or either of them, in any wise in relation to the trial.

All reasonable accommodation—

346. All reasonable accommodation and necessities shall be provided for the jury, by and at the expense

of some neglect, inadvertence, or omission, from any cause, to subject the person making the deposition to cross-examination upon a particular point.

The provision proposing to authorize a deposition taken by a magistrate or justice to be read upon the trial, if the witness making the same is kept out of the way to prevent his giving evidence, is not contained in the above-mentioned statutes, but is of considerable importance in the interests of justice; *vide* *Rex. v. Harrison*, 4 St. Tr., 492.

of the sheriff, who shall be entitled to be repaid the same out of the same fund as the other expenses in the case are hereby authorized to be paid.*

347. Upon any trial under the provisions of this Code, the addresses to the jury shall be regulated as follows, and not as heretofore :

Counsel for the prosecution, upon the jury being sworn, may state to the jury the facts which it is proposed to prove in evidence upon the Act of Accusation.

At the close of the evidence for the prosecution, if the accused or either of them (if there be more than one) be represented by counsel, it shall be the duty of the Judge to inquire : (a) if the accused or either of them have not been already examined by or on behalf of the prosecution, whether it is proposed to tender the accused or either of them (if more than one) for examination ; (b) whether it is proposed to adduce evidence for the defence. Unless it be intimated that it is proposed to examine the accused or either of them (if more than one), or to adduce any evidence for the defence, counsel for the prosecution may thereupon, if he shall think it necessary so to do, address the jury for the purpose of summing up the evidence that has been given.

348. Counsel shall not be entitled to address the jury for the purpose of summing up the evidence where the Judge decides that there is no case against the accused (or if there be more than one, that there is no case against either of them) to go to the

PART II.
—
dation and
neces-
saries to
be pro-
vided for
jury,
when not
allowed to
separate.
Addresses
of counsel,
how regu-
lated.
Opening
address of
counsel
for the pro-
secution.
Summing
up of evi-
dence for
prosecu-
tion where
no evi-
dence
called for
the de-
fence.

Counsel
not en-
titled to
sum up
where
Judge
directs
there is no

* At present the jury are not permitted to separate in cases of felony. In misdemeanours they are allowed to return to their homes during any adjournment of the trial.

PART II. jury, or where the accused is not (or if more than one, neither of the accused is) represented by counsel.

case, or if
accused
not repre-
sented by
counsel.

Speech
for the
defence
where no
witnesses
called
for the
accused.

349. At the close of the evidence for the prosecution, and of the address of counsel for the purpose of summing up the evidence for the prosecution (if any) in any case in which counsel is entitled to sum up, counsel for the accused shall be entitled to address the jury on his behalf; or if there be more than one person jointly accused, and such persons be separately represented by counsel, counsel for each of such accused who is separately represented shall be entitled to address the jury, each in turn, on behalf of the accused persons whom they respectively represent.

Speech
for the
defence
when
witnesses
are called.

350. In any case in which it is intimated, at the close of the evidence for the prosecution, that it is proposed to examine the accused, or either of them (if more than one), or to adduce evidence for the defence (either or both), counsel for the accused shall thereupon be entitled to address the jury on behalf of such accused upon the evidence called for the prosecution, and also for the purpose of stating to the jury what facts it is proposed to lay before them for the defence; and if there be more than one person jointly accused, and such persons be separately represented by counsel, counsel for each of such accused separately represented shall be entitled to address the jury on his behalf upon the evidence called for the prosecution, and also for the purpose of stating to the jury the facts (if any) he proposes to lay before them for the defence.

Reply.

351. At the close of the examination (if any) of

any accused person called and examined on his own behalf or on behalf of any person jointly accused with him, and of the evidence (if any) adduced for the defence, counsel for the prosecution shall be entitled to address the jury upon the whole case; and at the close of such address, counsel for the accused shall be entitled to address the jury for the purpose of replying upon the whole case; and if there be more than one person jointly accused, and such persons be separately represented, counsel for each of such accused shall be entitled to address the jury for the purpose of replying upon the whole case.*

352. Where an accused is not represented by counsel upon his trial, he shall be entitled to address the jury in the same manner as, under the provisions hereof, counsel would be entitled to address them on his behalf, if he were so represented, at the close of the evidence for the prosecution, and at the close of

Accused
not repre-
sented by
counsel
entitled
to address
the jury
on his own
behalf.

* This clause proposes an innovation upon the present practice, under which, in any trial in which evidence is called for the defence, counsel for the prosecution is entitled to address the jury *last*, and to reply upon the whole case. So much is the effect of giving the prosecution the last word with the jury dreaded, that the risk is not infrequently run of refraining from calling the most truthful testimony in exculpation of an accused, at times with the most unfortunate result. Now, the prosecution has in every case, of necessity, a very great advantage, by being the first to unfold the narrative to the jury, told, of course, from its own point of view. Few will be disposed to underrate the importance of this, who know how impressions are created upon men's minds, and how difficult it often is to dislodge a first impression, however erroneous. As the prosecution is in every case in possession of this vantage, and seeing how serious to an accused—how terribly serious to many accused—is the issue of a criminal trial, I advocate most earnestly a concession which, whilst it will place prosecutor and accused upon a more fair and equal footing, cannot be calculated to prejudice the interests of justice. The impartial summing up of a Judge, which must follow, may be trusted to correct aught that is misleading in the speech of counsel for the defence.

PART II. the address of counsel for the prosecution (if any) in reply upon the examination of such accused, or any one jointly accused with him, or in reply to evidence called for the defence.

Counsel appearing for the Crown not to be entitled to speech in reply, save where authorized in other cases.

353. In any trial under the provisions of this Code, neither the Attorney-General, Solicitor-General, nor any counsel appearing on their behalf, or otherwise representing the Crown, shall be entitled to any right or privilege in respect of addressing the jury, for the purpose of replying or otherwise, save such as is hereby authorized and enacted in the case of any counsel appearing for the prosecution upon the trial of any Act of Accusation.*

Summing up of Judge.

354. At the conclusion of the evidence and addresses to the jury, the Judge shall, where necessary, sum up the case to the jury; and shall leave it to the jury, either to find a verdict of "Guilty" or "Not guilty," or may leave to the jury certain specific questions, and at the same time inform the jury that they may, if they think fit, instead of returning a verdict of "Guilty" or "Not guilty," answer the said questions one by one, and either affirmatively or negatively, or in such manner as they shall think fit.

Jury may retire to consider their verdict.

355. The jury shall, at the close of the evidence and of the Judge's summing up (if any), consider their verdict or finding. If the jury desire to

* This clause proposes to deprive the Crown of a privilege which it alone enjoys, and which certainly would not be granted to it were Parliament now asked to confer it for the first time. In State trials there is, if anything, a special exigency for affording exceptional protection to an accused. Any privilege granted to the Crown, and withheld in ordinary proceedings, is, *pro tanto*, an oppression of the subject.

leave the Court in order to consider the same, they shall be conducted by an officer of the Court (who shall in every case first take an oath, in such form as shall be prescribed by Rules of Court to be made and in force under the authority hereof, well and faithfully to observe and perform the duty required of him) to some private place, and there remain under the charge of such officer until they desire to return into Court. No juror shall be permitted to separate himself from the others, nor shall any person whatever be permitted to speak to or communicate with the said jury or either of them, except that it shall be lawful for the officer in charge to inquire whether they have agreed upon their verdict or finding.

356. Every such jury shall, when they have retired to deliberate, and during such deliberation, be allowed the use of fire and lights, and, by leave of the Judge, shall be supplied with such refreshment as shall be necessary and reasonable.

Jury to be allowed fire, lights, and reasonable refreshment.

357. The jury may either find the accused "Guilty" or "Not guilty," or may return a special finding, or may reply *seriatim* to any questions left to them by the Judge, as they shall think fit.

What verdict jury may find.

358. In any case in which the jury shall return a verdict of "Not guilty," or shall return a special finding, or shall reply to any question or questions left to them without finding a verdict of "Guilty" or "Not guilty," and such finding or reply shall, in the opinion of the Court, amount to a verdict of "Not guilty," it shall be the duty of the Court thereupon to direct a verdict of "Not guilty" to be

Court to direct verdict of "Not guilty" in accordance with finding of jury.

PART II. recorded in accordance with such verdict, finding, or answer.

Where verdict of "Not guilty" returned, accused to be discharged as to such accusation.

359. Whenever the jury return a verdict of "Not guilty," or the finding of the jury shall amount to a verdict of "Not guilty," in favour of any accused person, other than a verdict of "Not guilty" upon the ground of insanity, such person shall be forthwith discharged out of custody, unless some other Act of Accusation shall be pending against him, upon which he has not been tried, in which case he shall be entitled to be forthwith put upon his trial and tried therefor.

Accused acquitted on the ground of insanity may be ordered to be detained during Her Majesty's pleasure.

360. Whenever the jury find a verdict of "Not guilty" upon the ground that the accused was of unsound mind at the time of committing the offence of which he is accused, the Court may order such person to be detained in custody during Her Majesty's pleasure; and such person shall be detained in such place, and under such restrictions, and for such period, as shall be, from time to time, authorized by law in that behalf.

Where jury find facts amounting in opinion of Court to a verdict of "Guilty," same may be recorded, or Court may give leave to move.

361. Whenever the jury find a verdict of "Guilty," or find certain facts proved, which finding, in the opinion of the Court, amounts to a verdict of "Guilty," against any accused person of the offence upon which he is tried, such Court may either direct a verdict to be recorded adjudging such accused person guilty accordingly, or may, in its discretion, give the accused leave to move a Divisional Court of the High Court of Justice to enter a verdict of "Not guilty." The Court before whom any such finding is returned may either give judgment in accordance

with such finding, or may reserve judgment, as in its discretion it shall think fit. PART II.

362. Every verdict shall be delivered in open Court, in the presence of the accused. A verdict or finding may be received and recorded on a Sunday, as well as on any other day. If in any case the jury are unable to agree upon a verdict or finding, they may be discharged by the Judge in any case in which he is of opinion there is no reasonable probability of such jury agreeing.

Verdict to be delivered in open Court. May be delivered on a Sunday. If jury unable to agree, Judge may discharge them.

363. It shall not in future, in any case, be necessary, upon any verdict of "Guilty" being returned, to inquire of the person who is convicted whether he has anything to say why judgment should not be passed upon him according to law. Any person who is convicted may nevertheless move to arrest judgment being passed upon him and to enter a verdict of "Not guilty," or for a new trial, upon either of the following grounds, that is to say :

Motion in arrest of judgment.

- (a) That the Act of Accusation does not, after any amendment which the Court has power to make under the provisions hereof, and has, before or during the trial, directed to be made, disclose any offence against this Code ;
- (b) That some irregularity, by which the accused has been materially prejudiced, has taken place at the trial.*

* At present, where any person is convicted of felony, the officer of the Court calls upon him to say whether he has anything to say why the Court should not pass judgment on him according to law. Few incidents in the administration of justice are more pitiable than this. The prisoner either remains silent, or if he addresses the Court, entirely misapprehend-

PART II.

Appeal in
mitigation
of punish-
ment.

364. Any person convicted of any offence against this Code upon any Act of Accusation (the sentence for which is in the discretion of the Court) may, either personally or by counsel, address the Court for the purpose of urging any facts in mitigation of punishment; and, in any case in which it shall think proper so to do, the Court may respite sentence to some future day to be named, in order to afford the person so convicted an opportunity of bringing before the Court, on affidavit or otherwise, any facts he may desire to submit to the Court in mitigation of sentence.*

In what
cases the
jury may
be dis-
charged.

365. In any of the following cases the jury may be discharged without giving a verdict, and a new trial had, if such a course shall appear to be, under the circumstances, inevitable:—

- (a) If the Judge presiding at the trial becomes incapable of trying it;
- (b) If during the trial either of the jury becomes incapable of acting;
- (c) If the counsel for an accused becomes in-

ing the meaning of the words addressed to him, and quite unconscious that he is only entitled to move in arrest of judgment upon purely arbitrary and technical grounds, not unfrequently enters into a review of the evidence, and an assertion of his own innocence; and, when stopped by the Court, is, in the majority of instances, either disgusted with what he considers to be an empty mockery, or convinced that impatience has been betrayed from a quarter where it is of the first consequence no such suspicion should attach. Those of the public who are not initiated not improbably share in this error.

In cases of misdemeanour no such formality takes place, and it has never yet, to my knowledge, been urged that the interests of justice have suffered in consequence. This formality is an antiquated remnant of the times when almost every felony was punishable with death, and its retention is, if anything, a positive evil.

* This is consistent with the practice on the Crown side of the Queen's Bench Division of the High Court of Justice.

capable of performing his duty in the case ; PART II.

- d) If the accused (or if more than one is jointly charged, either of them) becomes incapable, during the trial, of understanding or attending to the proceedings, or remaining in Court ;
- (e) In any other case of great necessity ;
- (f) In any case in which the accused voluntarily consents.*

In the case provided for by sub-clause (a), the jury may be discharged by any other Judge of the Court in which the trial takes place, or if there is no such Judge present, by the officer of the Court.

366. Whenever any person is convicted of any offence against this Code before any Court of Oyer and Terminer or Gaol Delivery, the Judge before whom the case is tried may, in his discretion, reserve any question of law which has arisen during the trial for the consideration either of a Divisional Court of the High Court of Criminal Justice, or of the Court of Criminal Appeal, and may postpone judgment upon the person so convicted until the question of law has been considered and determined ; and may, in his discretion, either commit such person to prison, pending the consideration and determination of such question, or admit him to bail, either in his own recognizance or with one or more surety or

Questions of law arising in the course of a trial before any Court of Oyer and Terminer or Gaol Delivery may be reserved for the consideration of a Divisional Court of Criminal Justice or the Court of Criminal Appeal.

* The law as laid down in "Blackstone's Com.," vol. iv. p. 360, that a jury cannot be discharged (except with the consent of the accused) unless in case of evident necessity, although some doubt has been thrown upon it in modern times, is obviously in accordance with the practice most consistent with the spirit and traditions of our system of criminal judicature, and ought, I submit, to prevail.

PART II. sureties, conditioned to appear, at such time or times as the Court shall direct, to receive the judgment of the Court in case the conviction shall be affirmed.

Judge who reserves any such question shall state the same in the form of a case.

Court for whose consideration any question of law is reserved may either reverse or affirm conviction.

If conviction reversed, certificate to be granted and person convicted, if in custody, to be forthwith discharged.

367. The Judge who so reserves any question of law, whether for consideration by a Divisional Court or by the Court of Criminal Appeal, shall state in the form of a case, in the manner now usual, the question or questions of law which he shall have so reserved, and the circumstances upon which the same have arisen; and such case, signed by such Judge, shall be transmitted to the Court for whose consideration the question of law is reserved, who shall hear and determine the same in open Court, and after hearing counsel for the prosecutor and the person convicted, in case either shall think fit to be so represented; and may either reverse or affirm the conviction. And in any case in which the conviction is reversed, the Court shall direct an entry to be made upon the record accordingly, and the judgment of the Court so entered upon the record shall have, in all respects, the same force and effect as though the person convicted had been found "Not guilty" by the jury by and before whom he was tried. Such person, if in custody, shall be forthwith discharged therefrom as to the offence of which he was convicted by the jury, upon the receipt, by the sheriff or keeper of the prison in whose custody he is, of a certificate under the seal of the Court by whom the conviction is reversed, and which certificate shall forthwith, upon the judgment of the Court being given, be made out and transmitted to the person in whose custody the person who was convicted

then is. Any such certificate shall be in the form (CQ) in the Appendix hereto, or some other like or similar form. If the Court for whose consideration the question of law is reserved shall affirm the conviction, judgment shall be given upon the person convicted at the next sessions of the Court before whom such person was convicted.

PART II.
Form of
certificate.

368. Whenever any person is convicted of any offence against this Code before any court of quarter sessions, the recorder, deputy recorder, or justice presiding at the trial may, in his discretion, reserve any question of law which has arisen during the trial for the consideration of the High Court of Criminal Justice, and in that case shall postpone judgment upon the person so convicted until the question of law has been considered and determined; and may, in his discretion, either commit such person to prison, pending the consideration and determination of such question, or admit him to bail, either in his own recognizance or with one or more surety or sureties, conditioned to appear, at such time or times as the Court shall direct, to receive judgment in case the conviction shall be affirmed.

Questions
of law
arising in
the course
of a trial
before any
court of
quarter
sessions
may be
reserved
for the
consider-
ation of
the High
Court of
Criminal
Justice.

369. The recorder, deputy recorder, or justice who so reserves any question of law shall state in the form of a case the question or questions of law which he shall have so reserved, and the circumstances upon which the same have arisen. Such case shall be in the form (CR) in the Appendix hereto, or as nearly so as circumstances will admit, and shall be signed by the person who states the same, and shall be by him transmitted to the proper officer of

Recorder
or justice
who re-
serves any
question
of law to
state the
same in
the form
of a case.
Form of
case to be
stated
for the
opinion

PART II. the High Court of Criminal Justice. And the said
of High Court of Justice. High Court shall hear and determine the same in
open Court, upon a day of which public notice shall
be given beforehand, and after hearing counsel for
the prosecutor and the person convicted, in case
either shall think fit to be so represented; and may
either reverse or affirm the conviction. And in any
case in which the Court shall reverse the conviction,
the procedure thereupon shall be in all respects the
same, and such reversal shall have the same force
and effect, as is hereinbefore enacted in the case of
the reversal of a conviction upon a point of law
reserved arising in the course of a trial before a
Court of Oyer and Terminer or Gaol Delivery. If
the Court shall affirm the conviction, judgment shall
be given upon the person convicted at the next
sessions of the peace holden in or for the county or
place where the conviction took place.

370. Whenever any case shall be stated upon any
question of law, whether arising upon a trial before
a Court of Oyer and Terminer or Gaol Delivery, or
quarter sessions, for the opinion of the High Court
of Criminal Justice, and such Court shall affirm the
conviction, the person whose conviction is so affirmed
may, if he shall so desire, appeal from the judgment
of the High Court of Criminal Justice to the Court
of Criminal Appeal, who shall hear and determine
such appeal in like manner, and shall have all the
like powers and authority for that purpose that are
hereinbefore enacted and provided where a case is
stated upon a question of law reserved in the course
of a trial before a Court of Oyer and Terminer or

Conviction may be affirmed or reversed. Procedure thereupon.

Appeal from the decision of the High Court of Criminal Justice upon a case reserved for its consideration to the Court of Criminal Appeal.

Gaol Delivery, for the opinion of the Court of PART II.
Criminal Appeal.

371. The Court who reserves any question of law for the consideration of the High Court of Criminal Justice or Court of Criminal Appeal may, upon the application either of the prosecutor or of the person convicted, if it shall think it right or necessary so to do, assign counsel to appear on behalf of either party, before the Court for whose consideration the question of law is reserved.*

Court
reserving
any ques-
tion of law
may assign
counsel to
either side
on appli-
cation.

372. Whenever any person is convicted of any offence, and no point of law is reserved, or leave given to the person convicted by the jury to move for a new trial, the Court may, in its discretion, either then and there proceed to pass sentence, or may postpone passing sentence; and in the latter case may direct either that the person so convicted be brought up, or that he appear to receive judgment, on a day then fixed, not being later than the then next session of the Court, or, with the consent of such person, that he appear to receive sentence if and when called upon by the Court so to do.

On verdict
sentence
may be
passed or
respired.

* The provision contained in this clause is new. It has not unfrequently happened, in the Court for the Consideration of Crown Cases Reserved, that no counsel has appeared on either side, or that one side only has been represented. As the Court often derives great assistance in coming to a right conclusion upon new and difficult points of law from the arguments of counsel, and the judgment of the Court is of importance, not only in the individual case, but as being declaratory of the law, and assisting the administration of criminal justice generally, a system which works in this hap-hazard way can hardly be regarded as satisfactory.

In other respects, the clauses relating to reserving questions of law arising upon criminal trials, when the accused is convicted, are substantially founded upon 11 & 12 Vict. c. 78 (the Act which first established the Court for the Consideration of Crown Cases Reserved), except that the High Court of Criminal Justice and Court of Criminal Appeal are, of course, substituted.

PART II.

When-
ever sen-
tence re-
spited,
Court may
admit per-
son con-
victed to
bail to
appear and
receive
judgment
on future
day, and
keep the
peace
mean-
while.

373. Whenever the Court shall postpone sentence, and shall direct that any person who has been convicted as aforesaid shall appear to receive judgment on a day fixed for that purpose, it shall be lawful for such Court, in its discretion, either to order that such person be detained in custody meanwhile, or to admit the person so convicted to bail, either in his own recognizance, or with such surety or sureties and in such amount as to the Court shall see fit; conditioned that the person so convicted shall appear and receive the sentence of the Court upon the day appointed, and also, if the Court shall so require, that he be of good behaviour and keep the peace meanwhile.

If Court
direct that
any person
convicted
appear to
receive
judgment
if called
upon, he
shall be
released
on bail to
come up
if called
upon, and
to keep
the peace
mean-
while.

374. Whenever the Court shall postpone giving judgment, and shall direct that any person who has been convicted as aforesaid shall appear to receive sentence if and when called upon so to do, without fixing any particular day, as provided by clause 372, such Court shall admit such person to bail, either in his own recognizance, or, in the discretion of the Court, with such surety or sureties and in such amount as the Court shall think fit; conditioned that the person so convicted shall appear to receive the sentence of the Court if and when required so to do, upon due notice for that purpose, and also, if the Court shall think it necessary, that the person so convicted shall be of good behaviour and keep the peace meanwhile and until so called upon to appear and receive sentence, or for any definite period to be fixed by the Court.

A person
ordered to
come up

375. Whenever any person convicted under the provisions hereof, and who has been directed to

appear and receive the sentence of the Court if and when called upon, shall be desirous of receiving the sentence of the Court, it shall be lawful for such person to surrender himself at any sitting of the Court, and to require sentence to be passed upon him for the offence of which he was convicted; and in such case it shall be the duty of the Court to pass sentence accordingly.

PART II.

for judgment if and when called upon may require Court to pass sentence on him.

376. No person convicted under the provisions of this Code, and who has been directed to appear and receive the sentence of the Court if and when called upon, shall be liable to be sentenced to any punishment whatsoever, or to have any order made upon him in respect or in consequence of such conviction, after the expiration of the time when, if such person had been sentenced to the *maximum* term of penal servitude or imprisonment by this Code in such case authorized, such sentence would have expired by effluxion of time, save and except where within such period such person has been ordered to appear and receive sentence, and has disobeyed such order.

Limitation of time within which sentence may be passed on a person ordered to come up for judgment if and when called upon.

377. Whenever it is proposed to prove against any person, under any of the provisions hereof, a previous conviction, the production of a certified copy of such conviction or of a certificate, in either case under the seal of the Court before which the conviction took place, or in the case of a summary conviction, under the seal of the Court to which such conviction is transmitted under the provisions hereof, shall be in every case full and sufficient evidence that such conviction took place; and the production of such certified copy or certificate under the seal of the

Previous conviction, how proved.

PART II. Court as aforesaid, and the evidence of any person who was present at the trial at which such conviction took place, and who deposes that the person against whom such previous conviction is proposed to be proved is one and the same person as the person mentioned in the said certificate, shall be full and sufficient proof that such person has been previously convicted of the offence mentioned in such certificate, unless he shall prove the contrary.

CHAPTER XIV.

ADMISSIONS, INSPECTION, AND VIEWS.*

378. ANY prosecutor may admit any document or any statement of fact proposed to be adduced in evidence upon the trial of any Act of Accusation under the provisions hereof by an accused; and every person so accused may admit any document or any statement of fact proposed to be adduced in evidence against him upon the trial by the prosecution.

PART II.

What admissions may be made in a criminal trial.

379. Any such admission may be made in open Court during the trial, either by the party making the same, or by his counsel: provided that if the admission be made by any accused personally, he states, in reply to a question to be addressed to him at the time of such admission being made by the officer of the Court, that he makes the same of his own free will, and not in consequence of any promise or threat held out to him to induce him to make the same; and provided also that if the admission be made by counsel for any accused person, the same shall only be binding upon the accused if made in his presence and hearing, and if he state, in reply to a question to be addressed to him at the time of

In what manner such admissions may be made.

* *Vide* Preface, p. lxiv.

PART II. such admission being made by the proper officer of the Court, that the same is made with his authority and consent, and without any promise or threat having been held out to him to induce him to make the same. Any admission which is hereby authorized may likewise be made before the trial, provided such admission be in writing, and signed by the counsel or solicitor for the party making the admission, but not otherwise; and any counsel or solicitor making such admission shall be required to certify in writing, at the foot of such admission, that he is duly and fully authorized to make the same by the party on whose behalf such admission purports to be made.

Form and effect of admission in writing, and when same may be given in evidence.

380. Any admission made under the provisions hereof, which is required to be in writing, may be in the form (AM) in the Appendix hereto, or some other like or similar form; and any such admission purporting to be signed by the counsel or solicitor of the party making the same, and which such counsel or solicitor shall certify to have been duly authorized, as hereinbefore provided, being produced at the trial, shall be sufficient evidence of any document or statement of fact thereby admitted, unless upon the trial it shall be proved that such admission is not in fact signed by the person by whom it purports to be signed, or was signed without authority, or that the authority to sign the same was obtained by fraud or duress, or by means of a promise or threat.

Parties may be required to make

381. Any prosecutor may call upon an accused, and any accused may call upon the prosecutor, by a notice in writing, to admit any document or state-

ment of fact which is purely of a formal character; and in case of refusal or neglect to admit after such notice, the person giving the same may apply, upon giving due notice to the person refusing or neglecting to admit, to the High Court of Criminal Justice, or to any Judge thereof, either in Court or Chambers, for an order requiring such person to admit such document or statement of fact; and such Court or Judge, if he shall be satisfied that such person has unreasonably and without any just cause refused or neglected to make such admission, and that the evidence sought to be admitted is purely of a formal character, and that it is expedient in the interests of justice and with a view to avoid unnecessary trouble or expense, and also (in the case of an accused) that the person so refusing or neglecting cannot be prejudiced thereby upon his trial, may make an order requiring such evidence to be admitted. Such order may be in the form (AO) in the Appendix hereto, or in some other like or similar form, and shall be under the seal of the Court; and such order under the seal of the Court, being produced upon the trial, shall be sufficient evidence, without other or further proof, of any document or statement of fact by such order directed to be admitted.

PART II.
certain admissions.

Court or Judge may direct admissions to be made.

Form of order.

382. Whenever any such application is made and the person refusing or neglecting to admit, having been served with such notice, shall be in custody, and shall not appear upon the hearing of the application, by counsel or solicitor, the Court or Judge to whom such application is made may, if in his discretion he shall think fit, direct such application

What orders may be made upon any application under last preceding clause.

PART II. to stand over, and notice thereof to be served upon such person, calling upon him to show cause why the order asked for should not be made, and requiring the governor or keeper in whose custody such person is, to bring up such person upon the hearing of the application, at a day and hour to be specified in such order; and such governor or keeper shall bring up such person accordingly. Such order shall be under the seal of the Court, and may be in the form (OP) in the Appendix hereto, or to the like or similar effect.

Form of order.

Accused may obtain order for production of books and documents relating to offence of which he is accused, or his defence thereto.

383. It shall be lawful for the High Court of Criminal Justice, or any Judge thereof, or any Court before whom any accused person is appointed to be tried, upon application by or on behalf of the accused, to order the production by any person, and either upon oath or otherwise, of such books and documents relating to the offence of which such person is accused, or to his defence thereto, as such Court or Judge shall think right; and such Court or Judge may make any order as to the custody, or may deal with such books or documents, when produced, as to such Court or Judge shall appear just.

Court may order production by accused.

384. The Court or Judge may likewise, if he or they shall think it proper and necessary so to do, order the production, without oath, by any accused person, either before or at the trial, of any book or document in his possession or power which relates exclusively, or of so much thereof as relates exclusively, to the offence of which the accused is charged.

Accused

385. Any accused person may, without filing any

affidavit, apply to the High Court of Criminal Justice, or any Judge thereof, or any Court before whom such accused is appointed to be tried, by notice or summons, for, and such Court or Judge may make, an order directing the prosecutor to make discovery, on oath, of the books and documents which are or have been in his possession or power relating to the offence of which such person is accused. The affidavit to be made by any prosecutor against whom any order as is in this clause mentioned is made shall specify which (if any) of the books or documents therein mentioned he objects to produce, and the ground of every such objection. Such affidavit shall be in the form (AD) in the Appendix hereto, or as nearly so as circumstances will admit.

PART II.
may obtain an order for prosecutor to discover, on oath, the books and documents relating to offence of which accused is charged, which are or have been in his possession or power.
Form of affidavit.

386. An accused shall be entitled, at any time before or at the trial, by notice in writing, to give to the prosecutor notice to produce, for his inspection, or the inspection of his counsel or solicitor, any book or document set out, or to which reference is made, in the Act of Accusation preferred against such accused, or in any affidavit made by the prosecutor, or in the custody, possession, or power of the prosecutor, and to permit him or them to take copies thereof. Such notice may be in the form (NP) in the Appendix hereto, or some other like or similar form.

Accused may require production.
Form of notice.

387. The prosecutor to whom such notice is given to produce for inspection before the trial, shall, within two clear days from the receipt of such notice, deliver at, or send through the post to, the address given in such notice, a notice stating a time within forty-eight hours from the delivery of or

Prosecutor by whom production required to give a notice appointing a time to produce.

PART II. time when such notice, sent through the post, would, in the ordinary course, be received, at which the books and documents mentioned in the notice requiring their production, or such of them as the prosecutor does not object to produce, may be inspected, either at the place of residence or business of the prosecutor, or at the office of his solicitor, or at the Court where the preliminary inquiry took place, and stating which (if any) of the books or documents he objects to produce, and on what ground. Such notice may be in the form (NNP) in the Appendix hereto, or some other like or similar form.

Form of
notice.

If prosecutor omits to give notice, or objects or refuses to produce, accused may apply for an order.

388. If any prosecutor, being served with a notice requiring him to produce, omits to give such notice of a time for inspection, or objects or refuses or omits to give inspection, the accused requiring the same may apply to the Court or Judge having jurisdiction to order production under the provisions hereof, who, if satisfied that the inspection ought to be granted, shall make an order accordingly, and may make such order as to the costs of such application as to such Court or Judge shall seem just.

389. Any prosecutor to whom a notice is given requiring him to produce at the trial, for the inspection of the accused, or his solicitor or counsel, any book or document set out, or to which reference is made, in the Act of Accusation preferred against such accused, or in any affidavit made by the prosecutor, or in the custody, possession, or power of the prosecutor, shall produce the same accordingly, unless he shall satisfy the Court that such inspection ought not to be granted.

390. If any person wilfully fails to comply with any order for discovery or inspection of documents made under any of the provisions hereof, he shall be liable to attachment; and a writ of attachment may be issued by the High Court of Criminal Justice against any person wilfully committing such default. Whenever, under any of the provisions hereof, any person is declared guilty of a contempt of the High Court of Criminal Justice, such person shall be liable to attachment; and in every case in which a writ of attachment may be lawfully granted by the High Court of Criminal Justice, the same may be issued by the said High Court in like manner as, and the said Court shall have all the same powers and authority in relation thereto as are now vested in or capable of being exercised by, the High Court of Justice in the like or similar cases.

PART II.
Persons wilfully failing to comply with an order for discovery or inspection liable to attachment.
High Court of Criminal Justice to have the same powers in reference to granting a writ of attachment as are vested in the High Court of Justice.

391. It shall be lawful for the High Court of Criminal Justice, or any Judge thereof, or any Court before whom any accused person is, or is appointed to be, tried, to direct that the jury shall have a view of any place, thing, or person relating to the offence for which such person is to be or is being tried. Such view may be ordered to take place in such manner, and subject to such conditions, as the Court or Judge making the order shall direct, or as may be prescribed by Rules of Court to be from time to time made and in force under the provisions hereof, and either before or during the trial.

View.

CHAPTER XV.

APPLICATION FOR NEW TRIAL.*

PART II.

Every
person
convicted
may apply
for a new
trial.

Upon
what
grounds
a person
convicted
may apply
to Divisional
Court
for a new
trial.

392. ANY person who is convicted of any offence against this Code shall be entitled to apply for a new trial.

393. Subject to anything in this Code contained, and to any Rules from time to time to be made and in force under the provisions hereof, any person who is found guilty by a jury of any offence against this Code may apply to have the verdict rescinded, and for a new trial, upon any or either of the following grounds, viz. :

- (a) That the verdict was not justified by the evidence ;
- (b) That the verdict was against the weight of evidence ;
- (c) That material evidence, which might have influenced the result, was improperly rejected or excluded ;
- (d) The improper reception of any material evidence in support of the charge ;
- (e) Surprise ;

* For an explanation of the present law upon this subject, and the changes proposed, *vide* Preface, pp. xxvi.—xxxii.

(f) Misdirection ;

PART II.

(g) That material evidence is forthcoming which it was not in the power of the person convicted to bring forward at the trial ; or which for any other reason satisfactory to the Court was not in fact brought forward. Or :—

(h) In any case where it shall appear to the Court that it is just or expedient that a new trial should be had.

394. Nothing herein contained shall authorize the rescission or interference with any verdict of “Not guilty,” or shall authorize or empower the granting or holding of any new trial in the case of any person in whose favour a verdict of “Not guilty” has been returned, but such verdict of “Not guilty” shall be final and conclusive in all respects so far as the same relates to the person in whose behalf such verdict has been returned : provided that nothing herein contained shall be deemed or construed to prevent any person found guilty from applying for a new trial in a case where he has been jointly charged with any other person or persons, and a verdict of “Not guilty” has been returned in favour of one or more of such persons.

Verdict of
“Not
guilty”
not to be
disturbed.

395. If the conviction appealed from took place before a Court of Oyer and Terminer or Gaol Delivery, the person so convicted, and in the case of two or more persons jointly convicted, either or all of them, may apply to the Judge who presided at the trial ; and such Judge may either grant or refuse a new trial, or may grant a new trial in the

To whom
applica-
tion to be
made in
the first
instance.

PART II. case of one or more of the accused, and refuse it as to any other person who was jointly convicted, or may give the person or persons convicted, or either of them, leave to move a Divisional Court of the High Court of Criminal Justice for a new trial.

If such conviction took place before a court of quarter sessions, such application may be made to the recorder or deputy recorder, or, where there is no recorder, to the justice who presided at the trial, and one at least other justice thereat, who may either grant or refuse a new trial, or may grant a new trial in the case of one or more of the accused, and refuse it as to any other person who was jointly convicted, or may give the person or persons convicted, or either of them, leave to move a Divisional Court of the High Court of Criminal Justice for a new trial.

Motion to
Divisional
Court for
a new
trial.

396. In any case in which leave is granted to move a Divisional Court for a new trial, and in the case of any person convicted as to whom the Judge, recorder, deputy recorder, or justices before whom such person was convicted has refused to grant a new trial, or to give the person convicted leave to move a Divisional Court for a new trial, the person convicted may apply to a Divisional Court of the High Court of Criminal Justice, who may either grant or refuse such application.

What
orders
Divisional
Court
may
make.

397. Upon any application for a new trial, the Divisional Court may either direct a new trial to be had, or may refuse the application; and in case any application for a new trial is made in a case where two or more persons have been jointly accused and convicted, the Court may direct that a new trial be

had as to one or more of such persons, and may refuse to direct a new trial in the case of any other person jointly accused. PART II.

398. Whenever any person who has been convicted has applied to a Divisional Court for a new trial, and such application has been refused, such person may apply to the Court of Criminal Appeal for a new trial, and the Court of Criminal Appeal may grant or refuse the application, as it shall think fit. Appeal to Court of Criminal Appeal against refusal of Divisional Court to grant new trial.

399. In any case in which a new trial is directed to be had, it shall be lawful for the Court granting the same to impose any terms or conditions as to the said Court may seem right and just, and either as a condition precedent to a new trial being had or otherwise, as the said Court shall think fit. Provided that any person, upon whose application a new trial is directed, who considers himself aggrieved by any term or condition imposed, under the provisions of this clause, by any Court, Judge, recorder, deputy recorder, or justices, shall be entitled to appeal therefrom to the Court of Criminal Appeal, who may discharge or vary any such order, or may make such order or give such direction, as to the said Court may seem just. Court granting a new trial may impose terms.

400. No new trial shall be granted in the case of any person who has been convicted, either alone or jointly with any other person, except with his consent: provided that where two or more persons have been jointly charged and convicted and one or more of such persons shall refuse to consent to a new trial, such refusal shall not prevent the Court granting a new trial in the case of any other person who No new trial to be granted unless with the consent of the person convicted.

PART II. shall desire that a new trial be had; but the Court may direct a new trial in the case of such last-named person, and such trial shall be had accordingly.

If new trial granted, Court may give directions as to same.

401. In any case in which a new trial is granted, the Judge or Court granting the same shall direct when, where, and before what Court having jurisdiction to try the offence, such new trial shall be had; and the same shall take place accordingly.

Procedure on new trial.

402. Subject to any order that may be made by the Judge or Court granting the same, and to any Rules of Court to be from time to time made and in force under the authority hereof, every new trial which is directed to take place, and the proceedings thereunder, shall be the same as are hereby authorized and enacted in or in relation to an original trial of any person committed to take his trial for the same offence.

New trial may be applied for by counsel or applicant in person.

403. A new trial may be applied for either by counsel or by the applicant in person: provided that when any person desirous of applying in person for a new trial is in custody under sentence, he shall not be entitled to be brought up before a Divisional Court or the Court of Criminal Appeal, save and except he shall first have obtained for that purpose an order from the Judge, recorder, deputy recorder, or justice who presided at the trial at which he was convicted, or from the High Court of Criminal Justice, or the Court of Criminal Appeal, or a Judge thereof.

Applications for new trial to be heard

404. Every application for a new trial, or to enter a verdict of "Not guilty," shall be heard and determined in open Court. Notice thereof shall be

given to the prosecutor, who shall be entitled to be heard thereon. PART II.

Every application for a new trial shall (unless special leave is given by the Court to which such application is made) be made within such time as shall be limited by the Rules from time to time to be made and in force under the provisions of this Code. and determined in open Court. Time within which application for new trial must be made.

405. Whenever any person is convicted of any offence against this Code, and a new trial is directed to take place in respect thereof, the execution of any sentence pronounced upon such person in consequence of such conviction shall be suspended until such new trial has been had. Arrest of execution of sentence pending new trial or motion for same, and power to admit to bail pending the same.

Whenever leave is given to any such person to move for a new trial, the execution of any such sentence as aforesaid shall be suspended until such motion has been disposed of, and in the case of an appeal from the decision of the Court to which such motion is made, until such appeal has been disposed of; and if a new trial is granted, the execution of such sentence shall be further suspended until such new trial has been had.

In any other case in which a new trial is intended to be applied for by any person, the Court before whom such person is convicted, or to whom such application is or is intended to be made, may, if it shall see fit so to do, suspend the execution of the sentence passed upon such person in respect of the conviction appealed from, or any part thereof.

In any case in which a new trial or leave to move for a new trial is granted, or in which the Court

PART II. shall see fit to suspend the execution of any sentence pending an application for a new trial, the production of a certificate stating the fact, under the hand of the officer of the Court in which the same is granted, shall be a full and sufficient warrant and authority in law to all persons concerned, to suspend the execution of such sentence. The Court, Judge, recorder, deputy-recorder, or justices granting a new trial, or giving leave to any person convicted to apply therefor, under the provisions hereof, may, in his or their discretion, admit the person in whose favour a new trial is directed, or to whom leave is given to move therefor, to bail pending such new trial or motion, either in his own recognizance only, or in his own recognizance with one or more surety or sureties, and in such amount as he or they may fix, conditioned for his appearance, and that he will render himself in execution, if required so to do, and otherwise obey the judgment any Court may pronounce; or may direct that such person be detained in custody pending such new trial or motion.

Where
new trial
granted,
Court may
make an
order for
payment
to accused
of costs
incurred
in such
new trial.

406. In any case in which a new trial is granted, it shall be lawful for the Court granting the same, if it shall so think fit, to direct that the costs of the accused, incurred in, and consequent upon, such new trial, be paid to him, and thereupon a certificate shall be granted to such accused, under the seal of the said Court. Any such certificate may be in the form (VC) in the Appendix hereto, or to the like or similar effect; and upon production thereof, after such new trial, to the person whose duty it is, under the provisions hereof, to pay costs in relation to the

trial of offences in the Court before which such new trial has taken place, the costs of and consequent upon such new trial shall be paid to such accused, or to some person by him lawfully authorized to receive the same. Provided that no such certificate shall in any case authorize the payment of any greater sum than the maximum sum authorized to be allowed in such case by any Rules of Court to be from time to time made and in force under the authority hereof.

PART II.

PART III.

OFFENCES AND PUNISHMENTS.

CHAPTER XVI.

(I.)—PRELIMINARY.

407. ALL and several the provisions of this Code PART III. which relate to the definition or punishment of offences shall extend to all acts and omissions committed by any person whatsoever in England Applica-
tion of this
part of the
Penal
Code. or Wales, including such acts and omissions committed upon or in any river or part of the sea within the body of any county in England or Wales; or upon or in any part of the open sea adjacent to the coast of any part of the United Kingdom which is situated between high and low water mark [or within a distance of the said coast of one marine league, measured from low-water mark, even if committed on board or by means of a foreign ship*]; or on board any British ship, vessel, or boat, on any part of the sea, or in any foreign waters where the tide ebbs and flows and great ships frequent; † or done in

* The words within brackets are designed to embrace the jurisdiction claimed by the "Territorial Waters Jurisdiction Act, 1878." But for this recent act of the legislature, I should not have ventured to claim jurisdiction over acts committed by a foreigner in a foreign vessel, the exercise of which might give rise to serious complications with foreign Powers.

† This is a paraphrase for "the jurisdiction of the Admiralty of England," which is the term used in statutes and by text writers.

PART III. or upon the sea by any person who, immediately before committing any such act, was in or upon any such ship, vessel, or boat.

Proviso to preceding clause.

408. Provided that all and several the provisions in this Code contained shall only apply to offences committed elsewhere than in England or Wales, when the person accused of any such offence is proceeded against and tried in England or Wales.

Provided also that nothing in the last preceding clause contained shall be deemed to restrict any other and further jurisdiction which is expressly conferred by this Code. But whenever it is hereby enacted that any clause shall extend to acts done by any natural born subject of, or other person owing allegiance to, the Sovereign in any part of the world, such clause shall apply and extend to such acts, wherever the same may be committed, but only when the person accused is proceeded against and tried in England or Wales.

Restriction on proceedings against any person, not being a British subject, for offence committed on board of or by means of a foreign ship.

409. No proceeding, under any of the provisions of this Code, for the trial or punishment of any person not a subject of, or owing allegiance to, Her Majesty, and who is alleged to have committed any offence (other than any of the offences included in clauses 500 to 502 respectively of this Code*) on any part of the open sea adjacent to any part of the coast of the United Kingdom which is situate between high and low water mark, or within a distance from the said coast of one marine league, measured from low-water mark, on board or by means of any foreign ship, shall be instituted in any Court

* These clauses relate to piracy.

in England or Wales, except with the consent of one PART III.
 of Her Majesty's principal Secretaries of State, and
 on his certificate, in writing, that the institution
 of such proceedings is, in his opinion, expedient.
 The production, upon the trial of any such person,
 of a document purporting to be signed by one of
 Her Majesty's principal Secretaries of State, and
 containing such consent and certificate, shall be
 sufficient evidence for all purposes of this clause.*

410. In the construction of this part of the Penal Construction
of
terms.
 Code, unless there is anything in the subject or con-
 text repugnant thereto, the several words hereinafter
 mentioned shall have and include the meaning
 following, that is to say :—

The expression “the Sovereign” means the “The
Sove-
reign.”
 Sovereign for the time being of these realms.

The term “property” means and includes †— Term
“pro-
perty.”

Every kind of property whatever, whether real
 or personal, movable or immovable, including

* This clause is framed in accordance with ss. 3 and 4 of the “Territorial Waters Jurisdiction Act, 1878.” I venture, with all due humility, to point out that the objection I have stated in a previous note is not removed by casting the responsibility for a prosecution, founded upon an assumed jurisdiction not acquiesced in by other nations, upon a Secretary of State.

† This definition may appear needlessly involved to those not familiar with the technicalities of our criminal law. A simpler definition might easily be framed, but there would be danger lest it might lead to disputation, which would be a far graver evil. A chief source of difficulty arises from the refinements of the common law as to the kinds of property that could be the subject of theft and other like offences, and the statutory exceptions by which the common law has been qualified. Thus, at common law, land, or anything fixed thereto or growing thereout (*e.g.* corn, trees, etc.), or savouring of realty (*e.g.* title-deeds), could not be the subject of theft; and so also with *choses* in action (*e.g.* bonds, bills of exchange, and other securities); a number of living animals, etc. (1 Hale, P. C. 510–512). But the legislature stepped in, and, from time to time, statutes have been passed until the common law rules upon the subject have

PART III. (save as hereinafter mentioned), everything growing out of land, or which is fixed to or part of land, or which savours of real property ; any ore of any metal, or any other mineral, in any mine ; all living creatures which are either tame or in a state of confinement, and the product of any of them ; and oysters and oyster brood in oyster beds, layings, and fisheries, which are, and are marked out sufficiently as, the property of any person.

It includes also everything which is by this Code defined or included under the term of a "valuable security."

But it does not include any living creature wild by nature, untamed, and in the enjoyment of its natural liberty, or the dead body of any such creature, unless the same is known to have been actually taken possession of by, or on behalf of, the person who is by law entitled thereto ; or anything which is fixed to, or is growing out of, land, and which is under one shilling in value ; save and except trees, saplings, shrubs, and underwood, which are cultivated for food for man or beast, or for medicine, distilling, dyeing, or for the purpose of or in the course of any manufacture, or growing in any garden, orchard, pleasure-ground, or nursery garden, or in any place communicating, either immediately or by means of a covered and enclosed passage, with any dwelling-house.

"Proceeds
of."

The term "proceeds of," applied to property, been almost entirely obliterated (*vide* particularly 24 & 25 Vict. c. 96, "Larceny Consolidation Act"). Were a short general definition now substituted, it may be predicted with certainty that many of the old subtle arguments, which prevailed in former times, would revive ; and it is on this account that I have thought it safer to frame a definition which is, in effect, an assemblage of the common law rules, with the modifications and additions engrafted thereon by the various statutory enactments in force.

includes any property into or for which such first-mentioned property may have been converted or exchanged, whatever number of such conversions or exchanges may have taken place, or any property acquired therefor, either directly or indirectly. PART III.

A valuable security means and includes—

“Valuable security.”

- (a) Any document, whether private or otherwise, and whether an original or copy, whereby, either in the present or future, any title to any property, real or personal, or any interest therein or to the possession or control thereof, or whereby any legal right, obligation, or liability is or is intended, or purports or is intended to purport, to be created, acknowledged, evidenced, extended, restricted, modified, transferred, extinguished, or released.
- (b) Any document containing, or intended or purporting to contain, any contract or offer, or any acceptance of any offer, or any note or memorandum of the terms of any contract, or any document which, either by itself or in conjunction with any other document or circumstance, creates, or is intended or purports to create, any legal obligation of any kind.
- (c) Any document containing any order, warrant, undertaking, authority, or request to give or transfer to any person any kind of property whatsoever, or the possession or control thereof; or to give credit or any privilege of any kind to any person.
- (d) Any record, document, or copy thereof,

PART III.

being either private or part of the rolls of any Court or office, which is or may be used as evidence of the title of any person to or in any property whatever, real or personal, or to the possession or control thereof, or to any interest therein or thereout, including any maps, plans, or other documents, which either form part of or are referred to in any such record, document, or copy thereof, as is in this subclause firstly mentioned.

Value of anything defined as a valuable security.

The value of anything defined as a valuable security is the amount of any property, or right, which it represents; or the amount of property, or damages, which is or may be lawfully recoverable thereunder.

“Ship.” “Ship” includes every description of ship, boat, or other floating craft.

“Month.” “Month” means a calendar month.

(II.)—GENERAL PROVISIONS.

Intent with which any act done is a question of fact.

411. Whenever, under the provisions of this Code, the particular intent with which an act was done is of the essence of the offence, the question with what intent such act was done is a question of fact for the jury.

Whenever a particular intent constitutes part of any offence, regard to be had whether accused

412. Whenever the existence of a specific intent is an essential part of any offence under the provisions of this Code, the jury shall, in determining whether or not such intent existed on the part of the person charged with such offence, take into consideration whether, when the act to which such intent is

relevant was done or omitted, such accused person was in fact incapable, from any cause whatsoever, of forming such intent, and shall find accordingly.

PART III.
was in-
capable of
forming
such
intent.
Definition
of "having
in his
custody or
possession."
"

413. The term "having in his custody or possession," whenever used in this Code in reference to any person accused of any offence, shall be deemed to mean and include not only the having it by himself in his personal custody or possession, but also the knowingly and wilfully having it in the custody or possession of any other person; and also the knowingly and wilfully having it in any place whatever, whether open or enclosed, and whether for his own benefit or for the benefit of any other person whatsoever.

414. Whenever, under the provisions of this Code, an offence consists of unlawfully, and with a criminal intent or knowledge, taking, appropriating, obtaining, receiving, or otherwise dealing with any property, such offence may be committed not only by a person doing either of the said acts in respect of property in which he has no interest, but also by either of the following persons in respect of any of the following property, viz. :

Offences
committed
by co-
owners.

- (a) The general owner of any property in which any other person has a limited right of property, with intent fraudulently to deprive such last-named person of such last-mentioned property or any part thereof;
- (b) Any person having any such limited right of property as lastly hereinbefore mentioned, with intent fraudulently to deprive

PART III.

- the general owner of his right of property or any part thereof;
- (c) Any person having the legal estate in any property in which another person is beneficially interested;
 - (d) A member of any copartnership, with intent fraudulently to deprive any other copartner of any property belonging to such copartnership; or any officer or member of any public, corporate, or aggregate body, with intent fraudulently to deprive any member of any such corporation or public or aggregate body of any property belonging to such corporation or public or aggregate body;
 - (e) One of two or more owners of any property, with intent fraudulently to deprive any other owner of any property of which they are owners jointly or in common.

Husband
and wife.

415. Provided that nothing herein contained shall be deemed to extend or apply to any act or dealing by any husband or wife in respect of or with any property belonging to his or her wife or husband respectively, save and except such husband and wife are separated and living apart from one another; or save and except the act or dealing is in respect of any property of which a husband is possessed only as a trustee for his wife under any trust deed, and which trust property has not been reduced into the actual possession of the wife; in either of which cases the relationship of husband and wife is immaterial.

416. Whoever assists or incites any husband or wife to deal with, or receives from either of them, any property belonging to the other in a manner which would, under any of the provisions hereof, amount to an offence if they were not married, commits the same offence as if such persons were not in fact married.

PART III.
Assisting
or inciting
husband
or wife to
commit an
offence in
relation to,
or receiv-
ing, prop-
erty of
the other.

417. Every person who is accused of any offence is presumed to be innocent, until the contrary is established by due course of law.

Every one
presumed
innocent
until
contrary
proved.

418. No person who commits any offence against this Code (other than a person who, under any express provision hereof, is declared incapable of committing an offence) shall be excused therefrom by reason only that he was at the time ignorant that he was thereby offending against the law.

Ignorance
of the law
not to
excuse an
offender.

419. Provided that in any case in which a particular intent is an essential ingredient of an offence, in determining whether an accused had or had not such intent, regard shall be had to any circumstance from which it may reasonably be inferred that the accused acted under a mistake, committed in good faith, as to any legal right or obligation.

But it may
be rele-
vant to the
question
of the
intent
with
which an
act is done.

420. In determining whether any person accused of any offence against this Code has or has not committed such offence, every such accused shall be deemed to have acted under that state of fact which he believed, in good faith and upon reasonable grounds, to exist at the time of committing the act of which he is accused; save and except in any case where, under any express provision of this

Position of
an accused
who acts
under
ignorance
or mistake
as to fact.

PART III. Code, ignorance of, or mistake as to, a particular fact on the part of an offender is declared to be immaterial.

No one to be convicted upon uncorroborated testimony of an accomplice.

421. No person shall be convicted of any offence against this Code, upon the evidence of any accomplice or accessory, unless such evidence be corroborated in some material particular, to the satisfaction of the jury by whom the accused is tried.*

(III.)—PLACE OF COMMISSION OF OFFENCES.

Where an offence is in general committed.

422. Every offence under the provisions of this Code is committed at any place, being within the jurisdiction of the High Court of Criminal Justice, where any act whatever is done or omitted which constitutes, or is an ingredient of, such offence.

Where offence of conspiracy is committed.

423. Every conspiracy within the provisions of this Code is committed either where the unlawful agreement is made, or at any place where any act is done by either of the persons conspiring in furtherance of such agreement.

Place of commission of offences resulting

424. Every offence against this Code which consists of or arises from the infliction of unlawful bodily injury, upon any person anywhere within the

* Under the present law, a person *may* be convicted upon the uncorroborated evidence of an accomplice (*vide* 1 Phil. Ev. 30; *R. v. Hastings*, 7 C. & B. 152); although it is usual for the Judge to tell the jury that it is unsafe to convict upon such evidence, in the absence of corroboration in some material part by unimpeachable evidence (*vide* 1 Phil. Ev. 31; *R. v. Addis* and *R. v. Webb*, 6 C. & P. 388 and 595; *R. v. Moores* and *R. v. Wilkes*, 7 C. & P. 270 and 272; and *Despard's case*, 28 How. St. Tr. 488; and the remarks of Holt, C.J., in *Charnock's case*, 4 St. Tr. 494). It has been well observed by Lord Hale, upon this subject, that more mischief has arisen to good men by admitting approvers to give evidence, and so enabling "desperate villains" to make "false and malicious accusations" against innocent persons, "than benefit to the public by the discovery and conviction of real offenders" (2 Hale, P. C. c. 29).

jurisdiction of the High Court of Criminal Justice, PART III. whether by an act of commission or omission, shall from un- be deemed to be committed, in any case in which lawful death results therefrom, either anywhere within the bodily said jurisdiction where such death takes place, or injury. where any such act of commission or omission, from which such death results, is done or suffered; and, in any other case, anywhere within the jurisdiction of the said High Court, where any act of commission or omission, causing or resulting in such bodily injury as aforesaid, is done or suffered.

425. Every offence which consists in unlawfully taking, appropriating, obtaining, dealing with, or receiving any property, or in forging or uttering or putting off any forged document, is committed anywhere within the jurisdiction of the High Court of Criminal Justice, where the offender has such property or document in his possession or control, whether the original taking, appropriating, obtaining, dealing with, or receiving such property, or the original forging, uttering, or putting off of such forged document, was or was not committed within the jurisdiction of the High Court of Criminal Justice.* Place of commission of offences in relation to property.

* This clause is new in part. If any person has in his possession, or feloniously receives, in one part of the United Kingdom, anything stolen or feloniously taken in another part of the United Kingdom, he may be tried and dealt with in that part of the United Kingdom where he has such property in his possession, or receives the same, in the same manner as if the property had been originally stolen in that part (*vide* 24 & 25 Vict. c. 96, s. 114); and in the case of forgery committed anywhere in England or Ireland, an offender may be tried in any county where he is apprehended or is in custody (24 & 25 Vict. c. 98, s. 41). But a person who, *e.g.*, commits a robbery abroad, and brings the proceeds of the robbery to, and disposes of them in, this country, commits no offence here by the law of England. This clause proposes to alter this, and to render the offender liable to be tried and punished, as though the robbery had been actually committed in England.

PART III.

Where
offence
committed
on bound-
ary of
counties
deemed to
have been
com-
mitted.

426. Whenever any offence, or any act which is an ingredient of any offence, against this Code (a) is committed on the boundary or boundaries of two or more counties,* or within the distance of 500 yards of any such boundary or boundaries; (b) is begun in one county or place† and completed in another, such offence shall, for all purposes of this Code, be deemed to have been committed in either of the said counties or places respectively, in the same manner, and as fully in all respects, as if such offence had been actually and wholly committed therein.

Offence
during a
journey,
where
deemed to
have been
com-
mitted.

427. Whenever any offence, or any act which is an ingredient of any offence, against this Code is committed during or in the course of any journey upon land, or of any journey or voyage upon any navigable river, canal, or inland navigation, such offence shall, for all purposes of this Code, be deemed to have been committed in any county passed through in the course of such journey or voyage; and whenever the side, bank, centre, or other part of any highway, river, canal, or navigation, traversed in the course of any such journey or voyage, shall constitute the boundary of any two counties, such offence shall, for all purposes of this Code, be deemed to have been committed in either of the said counties;—in each case, in the same manner, and as fully in all respects, as if such offence had been actually and wholly committed in either of the said counties respectively.

* Upon the authority of *Rex v. Welch*, 1 Moo. C.C. 175, this portion of the clause would be construed as applying to counties only in the geographical sense of the word.

† In this portion of the clause I have expressly used the words “county or place,” so as to extend the provision not only to counties proper, but to all areas of jurisdiction. *Vide* definitions of “county” and “place” in the interpretation clause of this Code, p. 5.

428. Whenever an offence consists in the publica-
 tion of, sending, delivering, or causing to be received,
 anything written, printed, or otherwise rendered
 legible, such offence is committed anywhere within
 the jurisdiction of the High Court of Criminal
 Justice, whence the same is written, printed, pub-
 lished, sent, or caused to be received, or where the
 same is exhibited, delivered, received, or caused to
 be received.

PART III.

Offence
 which
 consists in
 publish-
 ing, etc.,
 any docu-
 ment, etc.,
 is com-
 mitted
 whence
 same
 written
 or where
 published.

429. Whenever any offence to which the provisions
 of this Code extend is committed upon or in any
 part of the open sea adjacent to the coast of any
 part of the United Kingdom situate between high
 and low water mark, or within a distance of the
 said coast of one marine league, measured from low-
 water mark (even if committed on board or by
 means of a foreign ship); or on the high seas, or
 in foreign waters where the tide ebbs and flows and
 great ships frequent; or on land out of England; for
 the purpose of conferring jurisdiction upon any Court,
 Judge, magistrate, or justice, under the provisions
 of this Code, the same shall be deemed to have been
 committed either in the county of Middlesex, or in
 any county or place in England or Wales where the
 person accused of such offence shall be or be appre-
 hended, as fully in all respects as though such
 offence had been actually committed in such county
 or place.

Jurisdic-
 tion as to
 offences
 committed
 on the
 high seas,
 etc., or on
 land out of
 England.

CHAPTER XVII.

(I.)—PUNISHMENTS.

PART III.

Any person convicted of offence against this Code to be punished only as hereby authorized.

Every offender may be required to enter into recognizances, either in addition to or in lieu of any punishment.

430. ANY person convicted of an offence against this Code shall be liable to the punishment and other consequence (if any) hereby enacted in respect of such offence, and to no other.

431. Provided that every person convicted of any offence against this Code, for which he is liable to any punishment hereby provided, may, in addition thereto, in the discretion of the Court having power to award the same, be required to enter into his own recognizances, and to find one or more surety or sureties, or to enter into his own recognizances only, without surety, in such amount as such Court shall deem (and as shall be in fact, having regard to the position of the person convicted and the circumstances of the case) reasonable for the purpose, to be of good behaviour, and to keep the peace and abstain from any repetition or continuation of the offence of which he is convicted. Under no circumstance, shall any person be detained, in default of finding any surety or sureties, for any greater period than one year, exclusive of any other period of penal servitude or imprisonment for which he is sentenced under the provisions hereof.

432. The punishment of death, when authorized PART III.
by this Code, shall be inflicted in the manner pro- Punish-
vided by the "Capital Punishment Amendment Act, ment of
1868." death.

433. Whenever by this Code penal servitude is Duration
authorized to be awarded, no person shall be ordered of, and
to be kept in penal servitude for any shorter term mode of
than five years. The punishment of penal servitude inflicting,
shall be inflicted in manner provided by any statute penal
now or hereafter for the time being in force. servitude.

434. Imprisonment under the provisions of this Imprison-
Code shall be of three kinds, viz. : ment of

(a) Imprisonment with hard labour ;

(b) Imprisonment without hard labour ;

and upon any sentence of imprisonment being pro-
nounced, the Court pronouncing the same shall
distinctly specify whether it is to be with or without
hard labour. It shall not be lawful to award, or
subject any person to, imprisonment with hard labour
in any case save where imprisonment with hard
labour is expressly authorized, and is ordered to be
inflicted, under the provisions of this Code.

(c) Imprisonment as a first or second class
misdemeanant.

435. Any person sentenced to imprisonment as a Incidents
first or second class misdemeanant shall not be deemed of im-
a criminal prisoner ; but any imprisonment ordered prison-
to be inflicted in the case of any such person shall ment as a
be carried out, in all respects, in manner provided misdemea-
by an Act passed in the twenty-eighth and twenty-
ninth year of her present Majesty, chapter one hun-
dred and twenty-six, in the case of prisoners not nant.

PART III. being criminal prisoners, or any other statute at any time hereafter for the time being in force.

Imprisonment with or without hard labour, how inflicted. 436. Imprisonment with or without hard labour shall be inflicted, respectively, in manner provided by any statute now or hereafter for the time being in force.

No person to be flogged or whipped, unless authorized by this Code. 437. No person shall, after the coming into force of this Code, be liable to be either flogged or whipped, except in the cases expressly enacted by this Code.*

No female may be flogged or whipped. 438. No female shall, under any circumstances, be liable to be flogged or whipped; and whenever by this Code such punishment is authorized to be inflicted, such enactment shall be deemed and construed to apply exclusively to male persons.†

No person to be flogged whose age does not exceed sixteen. 439. No person shall be ordered to be flogged whose age does not, in the opinion of the Court before whom he is convicted, exceed sixteen.

Punishment of flogging, how inflicted. 440. The punishment of flogging, whenever authorized to be inflicted by this Code, shall consist of the infliction of a number of strokes not exceeding in the aggregate fifty, by an instrument to be named by the Court, and such aggregate number may be inflicted, either the whole at one time, or upon two

* It would seem that, as matters stand, any male person convicted of a misdemeanour at common law may be sentenced to be whipped as part of his punishment; and, under various statutes, persons convicted of certain felonies, and of other offences, may be ordered to be whipped. There are also statutory enactments authorizing whipping in the case of juvenile male offenders; notably 24 & 25 Vict. cc. 96-100, and 25 & 26 Vict. c. 18.

† At common law a woman might formerly be ordered to be whipped. This, however, was altered by 1 Geo. 4, c. 57. It will surprise many, probably, to learn that, in the present reign, a statute has been passed under which *a woman might be sentenced to be thrice publicly whipped* (5 & 6 Vict. c. 51, s. 2, "An Act to Punish Assaults upon the Queen").

separate occasions, in equal numbers; and in each case the Court shall distinctly specify the instrument to be used, the number of strokes to be inflicted, and whether the whole at one time, or upon two different occasions, and at what interval of time between each.*

441. The punishment of flogging shall only be inflicted if, in the opinion of the prison authorities charged with the carrying out of that portion of the sentence, such sentence can be executed without reasonable apprehension of permanently or seriously endangering the health of the person ordered to be flogged.

PART III.
—

Not to be inflicted where it may endanger health.

442. The punishment of whipping shall be ordered to be inflicted only if, in the opinion of the Court before whom the offender is convicted, his age does not exceed sixteen.

When punishment of whipping may be ordered.

443. The punishment of whipping shall consist of the infliction of a number of strokes not exceeding twenty-five, to be specified by the Court, with an instrument known as a birch rod.†

Punishment of whipping, how inflicted.

444. No flogging or whipping shall take place after the expiration of six months from the sentence being passed. And whenever flogging or whipping shall be awarded in the case of a person ordered, in addition to the sentence, to be flogged or whipped, the Court shall specify the period during which the punishment shall be inflicted.

Within what period flogging or whipping to be inflicted.

* By 26 & 27 Vict. c. 44, s. 1, a male offender, whose age exceeds sixteen, may be once, twice, or thrice flogged, and the number of strokes may be any number not exceeding fifty upon each occasion. This statute was expressly aimed against garotters, robberies with cruel violence being at that time unusually prevalent. It will probably be now considered that this clause goes far enough.

† At present the word "whipping" is used generally to denote both what is ordinarily spoken of as "flogging," and the minor punishment of the birch inflicted upon juvenile offenders. It seems desirable to distinguish the two punishments.

PART III. tion, to be kept in penal servitude, such flogging or whipping shall be inflicted before such person shall be removed to any convict prison, to undergo such sentence of penal servitude.

Flogging or whipping may be cumulative upon other punishment.

445. Every person who, under the provisions hereof, is liable to be flogged or whipped, besides being otherwise punished, may be sentenced to all or any one or more of such punishments.

Imposition of a fine, when authorized

446. Every person who is convicted of any offence against this Code, for which he is liable to be sentenced to penal servitude or imprisonment, with or without hard labour, may, either in addition to such punishment or in lieu thereof, be sentenced to pay a fine: provided that no person shall be ordered to pay a fine in respect of any offence of which he is convicted, and for which he is sentenced, upon conviction, to the maximum term of penal servitude or imprisonment by this Code authorized to be inflicted in the case of conviction for such offence.

Fines may be ordered to be paid by instalments.

447. Every person sentenced under the provisions of this Code to pay a fine, may, in the discretion of the Court, be ordered to pay the same forthwith in one sum, or by instalments, in such amounts and at such time, as the Court shall direct.*

Excessive fines unlawful.

448. Whenever, under the provisions of this Code, a fine is authorized to be inflicted, such fine shall not be excessive; but shall be proportioned to the nature of the offence committed, and also to the position in life and circumstances of the offender.†

* This is a new provision. Its reasonableness is obvious.

† This is substantially in accordance with a similar provision contained in the Bill of Rights (1 Will. & Mary, s. 2, c. 2).

449. No person ordered to pay a fine, under the provisions hereof, shall be imprisoned only by reason of his being unable to pay such fine. Such fine shall be in the nature of a judgment debt, and may be recovered from the person ordered to pay the same, in the same manner as any judgment debt may be recovered in civil proceedings. The provisions of any Act of Parliament for the time being in force, in relation to the wilful default in payment of judgment debts, shall apply and extend to all sums due from any person by way of fine, under the provisions hereof.*

PART III.
Abolition of imprisonment for inability to pay a fine.

450. The High Court of Criminal Justice, or any other Court having jurisdiction to try any offence under the provisions hereof, shall have power to issue the same process to compel payment of any fine which such Court has inflicted, as the High Court of Justice has to enforce payment of judgment debts in civil actions. Such process shall be under the seal of the Court issuing the same, and shall be, as nearly as may be, in the same form, and shall be executed in the like manner, as the process issued under similar circumstances by the High Court of Justice upon judgment debts as aforesaid.

Power to criminal Courts to enforce payment of fines by process similar to that issued by the High Court of Justice upon judgment debts in civil actions.

451. Whenever any person convicted, under the

Persons

* Fines may now be levied by distress in some cases, and in default of sufficient distress, imprisonment may be imposed, either with or without hard labour. In other cases, a person ordered to pay a fine may be imprisoned for a definite time, or until the same is paid. To imprison a man because he is too poor to pay a fine is clearly unreasonable, and is especially so since imprisonment for debt has been abolished by the legislature. When a person ordered to pay a fine is contumacious, and will not pay, he has only himself to thank if he is sent to prison for his contumacy. The provisions of the "Debtors Act, 1869," would, under this clause, enable such a person to be imprisoned.

PART III. provisions of this Code, of any offence punishable with penal servitude or imprisonment with hard labour, is, in the opinion of the Court before whom he is convicted, under the age of sixteen years, the Court may, in lieu of such punishment, sentence him to be imprisoned for a term not exceeding ten days, and at the expiration of such term to be sent to, and detained in, a reformatory school duly certified according to law, for a period of not less than two nor more than five years: provided that if the offence of which such person is convicted is an offence upon conviction for which the offender is, under the provisions of this Code, liable to be whipped, the Court may, if it shall think fit, in addition to such imprisonment and detention in a certified reformatory school, order that such person, before being sent to such school, be whipped.

In case of trivial offences, Court may refrain from passing any sentence, and may order person convicted to be discharged. 452. Whenever the Court before whom any person is convicted of any offence against this Code, shall be of opinion that such offence is of too little importance, or that otherwise from any cause it is inexpedient to award any punishment, the Court may, in its discretion, decline to pass any sentence or make any order, other than that the person so convicted be discharged.

Court may sentence any person convicted to the maximum or any lesser punishment hereby autho- 453. Every Court having jurisdiction to try any offence under the provisions of this Code, shall have power and authority to sentence any person convicted of any such offence, in its discretion, either to the maximum punishment by this Code in the case of conviction for such offence authorized, or to any lesser punishment which is hereby authorized there-

for; or may, in its discretion, abstain at the time from passing any sentence, and direct any person convicted to enter into his recognizance, either with or without a surety or sureties, to keep the peace and be of good behaviour, and abstain from any repetition or continuation of the offence of which he is convicted, or to come up for judgment if and when called upon, both or either.

PART III.
rized, or
abstain
from
awarding
any
punish-
ment, and
direct
offender
to enter
into
recogni-
zances.

(II.)—CUMULATIVE SENTENCES.

454. Whenever any person is convicted of two or more offences against this Code, he may be sentenced separately in respect of each of such offences, the sentences to commence each upon the expiration of the other: provided that no person shall be sentenced to imprisonment for any term, either single or aggregate, exceeding in the whole the term of two years, to be undergone at any one time continuously.

Persons
convicted
of separate
offences
may be
sentenced
upon each.
Limita-
tion of
sentence
of impris-
onment.

455. Whenever any person, not then undergoing sentence for any offence, is convicted of two or more offences, for each of which he would, but for the proviso in the last preceding clause contained, be liable to be sentenced to two years' imprisonment with hard labour, he may be sentenced in lieu of imprisonment, in respect of the two or more convictions, to penal servitude for any term not being less than five nor more than seven years.

What
punish-
ment may
be awarded
if person
convicted
of offences
for each of
which he
is liable to
two years'
imprison-
ment.

456. Whenever any person, not then undergoing sentence, is convicted of two or more offences, for some one or more of which he is liable to be sentenced to penal servitude, and for some other or others

Punish-
ment of
person
convicted
of offences
for some
one or

PART III. of which he is liable to be sentenced to imprisonment with hard labour, he may be sentenced to penal servitude for any term not exceeding the term of penal servitude for which he might have been sentenced in respect of the offence so punishable, and, in addition thereto, to one year's additional penal servitude for and in lieu of every year's imprisonment with hard labour to which he might, but for this clause, be sentenced in respect of the offence so punishable.

more of which he may be sentenced to penal servitude, and for others to imprisonment.

(III.)—SENTENCE AFTER PREVIOUS CONVICTION.

457. Whenever any person is convicted, under the provisions hereof, upon any Act of Accusation, of any offence for which he is liable to be sentenced to penal servitude for a term not exceeding five years, upon a first conviction; and it is proved that, previous to committing the offence of which he is so convicted, he has been either twice convicted in a summary way, in any part of the United Kingdom, of offences for which he might have been convicted and sentenced to imprisonment with hard labour for two years, upon an indictment or Act of Accusation; or has, in any part of the United Kingdom, been convicted, upon any indictment or Act of Accusation, of any offence punishable with imprisonment with hard labour for two years; such person may thereupon be sentenced to penal servitude for any period for which penal servitude may be lawfully awarded, not being more than seven years.

Sentence upon conviction for an offence punishable with five years' penal servitude after two previous summary convictions, or after conviction upon indictment or Act of Accusation.

458. Whenever any person is convicted, under the provisions hereof, upon any Act of Accusation, of any

Sentence upon conviction of

offence for which he is liable to be sentenced, upon a first conviction, to penal servitude for a term not exceeding seven years; and it is proved that, previous to committing the offence of which he is so convicted, he has been convicted of an offence, in any part of the United Kingdom, for which he was liable to be sentenced to penal servitude; such person may thereupon be sentenced to penal servitude for any term not exceeding fourteen years.

PART III.
offence
punish-
able by
seven
years'
penal
servitude,
after con-
viction for
an offence
punish-
able with
penal
servitude.

459. If the offence of which such person is convicted is one for which he is liable to be sentenced to penal servitude, upon a first conviction, for a term exceeding seven years, but not exceeding fourteen years; and it is proved that, previous to committing the offence of which he is so convicted, he has been convicted of an offence, in any part of the United Kingdom, for which he was liable to be sentenced to penal servitude; such person may thereupon be sentenced to penal servitude for any period not exceeding twenty years.

The like
where
offence
punish-
able by
fourteen
years'
penal
servitude.

460. If such offence is one for which the offender is liable to be sentenced, upon a first conviction, to penal servitude for a term exceeding fourteen years, and he has been previously convicted of any offence in any part of the United Kingdom, and sentenced to penal servitude; he may, upon conviction for such first-mentioned offence, be sentenced to penal servitude for life.

The like
where
offence
punish-
able by
penal
servitude
for a term
exceeding
fourteen
years.

461. No person, who has been already convicted and sentenced to penal servitude, shall for any subsequent offence, if sentenced therefor to penal servitude

Seven
years'
penal ser-
vitude to
be the

PART III. at all, be sentenced thereto for any shorter term
 minimum sentence in certain cases. than seven years.

Procedure where an accused is charged with having committed an offence after having been previously convicted.

462. Whenever, under the provisions of this Code, any person, accused of any offence upon any Act of Accusation, is alleged also to have been previously convicted, and is liable upon conviction of such offence to increased punishment by reason of such previous conviction, there shall be annexed to the Act of Accusation a statement setting out such previous conviction in substance, and stating all material facts and dates in relation thereto. The same shall not be communicated to the jury who are to try such accused, unless and until they return a verdict of "guilty" upon the Act of Accusation against such accused, in which case the accused shall be asked by the officer of the Court whether he admits that he has been previously convicted as alleged. If the accused admits that he was so convicted, such admission shall be recorded; if he denies that he was so convicted, the jury shall be sworn and charged to try whether he was so convicted or not; and such inquiry shall be conducted in the same manner in all respects, so far as relates to the question which the jury have to try, as is enacted by this Code in the case of the trial of an Act of Accusation.

(IV.)—POLICE SUPERVISION IN THE CASE OF PREVIOUSLY CONVICTED PERSONS.

Power to Court to order a person convicted upon an

463. Whenever any person is convicted of any offence, under the provisions hereof, upon any Act of Accusation, for which he is liable to be sentenced to penal servitude for seven years or upwards, or im-

imprisonment with hard labour for two years; and it is shown, to the satisfaction of the Court before whom such person is so convicted, that such person (a) has been previously twice summarily convicted before a magistrate or justices of the peace, in any part of the United Kingdom, of offences for which he might have been convicted upon indictment, or upon an Act of Accusation under the provisions hereof, and thereupon sentenced to imprisonment with hard labour for two years; or (b) has, in any part of the United Kingdom, been convicted upon an indictment, or under the provisions hereof, of any offence for which he was liable to be sentenced to imprisonment with hard labour for two years; such Court may, in addition to any other punishment which it is hereby authorized to award, direct that such person be subject to the supervision of the police for any period not exceeding seven years, commencing upon the expiration of the sentence then passed upon him. Such supervision shall be exercised in manner provided by an Act passed in the thirty-fourth and thirty-fifth year of her present Majesty, chapter one hundred and twelve, or any other Act hereinafter in force in substitution therefor; and all and several the provisions in the said Act contained, relating to persons ordered to be subjected to police supervision, shall apply and extend to all persons who are so ordered to be subjected under the provisions of this Code.

PART III.
 Act of Accusation, under the provisions hereof, after being twice summarily convicted of certain offences, or after having been convicted upon indictment or Act of Accusation, and sentenced to penal servitude or imprisonment with hard labour, to be subject to police supervision.
 Application of 34 & 35 Vict. c. 112.

CHAPTER XVIII.

(I).—PERSONS DEEMED INCAPABLE OF, OR IRRESPONSIBLE
FOR, THE COMMISSION OF CRIME.

PART III.

Who are
incapable
of crime.
Infants.

464. THE following persons are considered incapable of committing any crime or offence, viz. :

Every person whatever who is under the age of seven years at the time of the commission of any act.

Every person between the age of seven and fourteen years, unless such person is proved, to the satisfaction of the jury before whom he is tried, to have possessed, at the time of committing the act charged, sufficient discernment to understand the quality of the act he is charged with having committed, and to know that the same was forbidden by law.

Idiots.

Any idiot, *i.e.* any person who, by reason of defective mental power, was incapable of knowing the nature of the act committed by him.

Insane
persons.

Any person who, at the time of committing the act charged against him, was (a) under any insane delusion having reference to such act; (b) was under the influence of insanity, so as not to be capable of distinguishing the character or quality of the act he was committing.*

* *Vide* Preface, pp. ix.—xi.

465. No woman shall henceforth be deemed in- PART III.
capable of committing any crime or offence, or be Marital coercion not to excuse crime.
entitled to be acquitted thereof, by reason merely of
being under marital subjection or coercion, whether
arising from presumption or actual proof; but when-
ever a presumption fairly arises, or it is proved, that
any woman, in committing any offence whatsoever,
acted under the influence or coercion of her husband,
such fact shall be taken into account in any sen-
tence or penalty to be adjudged or awarded against
her, and the Court may, having regard to all the
circumstances of the case, either abstain from ad-
judging or awarding any punishment, or may miti-
gate the same in any manner that to the Court shall
seem fit.*

(II.)—MATTERS OF JUSTIFICATION OR EXCUSE.

466. No person commits any offence by doing, in Execution of acts by law authorized.
manner prescribed by law, any act which he is com-
manded, or which it is his duty, or which he is law-
fully authorized to do or execute by virtue of this
Code, or any law for the time being in force.

467. No act is an offence within the provisions of Execution of lawful sentences, passed by a Court lawfully empowered to pass same.
this Code which is done in the execution, in the
manner prescribed by law, by a person who is obliged,
or who is duly authorized, to execute a lawful sen-
tence or order, duly passed or made by a Court which
has, in fact, the right by law to pass such sentence
or to make such order.

A Court which, but for some formal defect in its What

* This is an innovation upon the present law. The grounds upon which it is justified will be found fully stated in the Preface hereto, pp. xi.-xiii.

PART III. authority or in its proceedings, or but for a mistake made in good faith as to a matter of fact, would have had jurisdiction to pass a sentence, shall be deemed to be a Court having the right by law to pass such sentence within the meaning of this clause; but a Court which has by law no jurisdiction at all over the case in which sentence is passed, is not such a Court, and a mistaken belief on the part of the Judge, or of the officer who executes the sentence, that it is such a Court, neither justifies nor excuses his act.

Court
be deemed
lawfully
em-
powered
to pass
sentence.

468. Whoever commits any offence (other than treason, murder, attempt to murder, piracy, rape, or arson) in consequence of a threat of immediate death or grievous bodily harm to be inflicted upon him in case of refusal, and which threat he honestly and upon reasonable grounds believes will be carried into effect, shall be deemed to have acted under such a degree of compulsion as to deprive him of free will, and shall be excused from all consequences by reason of the commission of such offence; unless it appear that he voluntarily became a party to some unlawful association or conspiracy, the being party to which rendered him liable to such compulsion.

Compul-
sion by
threat of
death or
grievous
bodily
harm.

469. Subject to the express proviso hereinafter contained, no person commits an offence under the provisions of this Code, by reason of his using reasonable and necessary force to any person, if the same be in fact indispensable in order:

- (a) To prevent a breach of the public peace or its continuance, or to suppress an actual riot;
- (b) In order to prevent the commission of treason, murder, burglary, rape, robbery,

In what
cases a
person
using
force does
not com-
mit an
offence.

arson, piracy, or any other offence against PART III.
 this Code which is attempted to be committed by actual force, and for which the offender committing the same is liable to be sentenced to penal servitude on a first conviction;

- (c) To overcome force used in resisting a lawful apprehension, or in preventing the escape or rescue of any person out of lawful custody;
- (d) When it is inflicted by way of self-defence against unlawful violence, or by any person for the purpose reasonably of defending himself, or any member of his family or household, or his property, or the house in which he resides or is, from any unprovoked attack.

Provided that such person uses no greater force, and inflicts no greater injury on any person, than is in fact absolutely necessary for the reasonable accomplishment of any or either of the said purposes; and provided also the amount of force used is not disproportioned to the danger to be apprehended from not resorting to the use of such force, and that the person using the same has first used every legitimate means in his power to avoid the necessity for resorting to any force at all.

470. The fact that any such person acted in obedience to the orders of any superior, or other person in authority whatsoever, is not a justification of his act, unless such act falls within the provisions in the last preceding clause contained.

Obedience to orders of a superior not a justification if otherwise unlawful.

PART III. 471. Whenever any person is proved to have committed any act or default which, but for some incapacity, or matter of justification, or excuse, would be an offence against this Code, it shall lie upon the person who sets up such incapacity, justification, or excuse, to prove that the same exists or existed.

Duty of proving incapacity, justification, or excuse to be on person who sets up same.

(III.)—PARTIES TO THE COMMISSION OF OFFENCES,
WHETHER AS PRINCIPALS OR ACCESSORIES.

Who are parties to an offence. 472. Every person is guilty of an offence against this Code, in one and the same degree, who, either personally, or by means of an innocent agent, knowingly :

- (a) Commits any act or makes any default which is an offence against this Code ;
- (b) Takes part in, or aids or abets in, the commission of any such act or default ;
- (c) Directly or indirectly, by counselling, soliciting, compelling, commanding, or aiding or assisting in the administration to or taking of, or by administering or causing to be administered to or taken by any person, any oath or engagement,* or otherwise incites or procures any person to commit, take part in, or aid and abet any person to commit any such act or default,

* At present the administering, etc., of an oath or engagement intending to bind the person taking the same to commit an indictable offence is a substantive crime, punishable with penal servitude for life, or for a term of seven years, according to the gravity of the offence the oath is intended to bind the person taking it to commit (*vide* 52 Geo. 3, c. 104, and 37 Geo. 3, c. 123). It would seem more logical, however, to treat the administering of such an oath as an incitement to the commission of the offence, and by adopting this view punishment may be more evenly and justly apportioned. The administering or taking of other unlawful oaths I have dealt with in clause 496 as a substantive offence.

if such act or default be in fact committed, PART III.
 and whether in the manner directed by —
 the person inciting, or otherwise.

473. Every person is guilty of an attempt to commit, or procure to be committed, an offence against this Code in the same degree who :

- (a) Attempts to commit any act punishable by this Code, either by an unlawful act or an unlawful omission to act ; Who are parties to an attempt to commit an offence.
- (b) Takes part in, aids, or abets in any attempt to commit any such act or omission ;
- (c) Directly or indirectly, (i.) counsels or solicits any person to commit any such act or omission which is not, in fact, committed or completed ; (ii.) attempts or endeavours to counsel, solicit, compel, or otherwise incite or procure, or proposes to any person to commit any such offence ; (iii.) administers or tenders, or causes to be administered or tendered to or taken by any person, or aids or assists any person in the administration or taking of any oath or engagement, to commit any such act or omission which is not, in fact, committed or completed.

474. An attempt to commit an offence, within the meaning of this Code, is an act done or omitted in furtherance of an intention, on the part of the person committing or omitting such act, to commit the said offence, and which is, under ordinary conditions, reasonably calculated for the commission thereof, but which is not in fact either committed or completed from any cause, and whether or not its commission What constitutes an attempt to commit an offence.

PART III. in the manner proposed was or was not possible, owing to any circumstance of which the person attempting to commit such offence was ignorant, or over which he had not control.*

Punish-
ment of an
attempt to
commit
an offence. 475. Whoever is convicted of attempting to commit any offence against this Code shall, unless special provision is otherwise made by this Code, be liable to be imprisoned, with or without hard labour, for any period not exceeding two years: provided that no person shall be liable to any other or greater punishment for attempting to commit any offence, than he would be liable to, under the provisions hereof, if he were convicted of having actually committed such offence.

Incite-
ments and
offenders 476. If several persons form a common intention, or if any person incites another, to commit any offence

* This clause is framed to prevent such failures of justice as are involved by the decisions in *Reg. v. McPherson*, 1 D. & B. 187, and *Reg. v. Collins*, L. & C. 471.

In the first of these cases, it was held that a man breaking into a dwelling-house with intent to steal goods which, contrary to his belief, were not in fact there, cannot be convicted upon an indictment for breaking into a dwelling-house with intent to steal. In the second case cited, it was held that a man does not commit the offence of attempting to steal, who puts his hand into a pocket which is empty, although he was ignorant of that fact, and intended to steal if he could. This being the law, it will probably be very generally thought time it should be altered, and made more in accordance with common sense. A man who puts his hand into a pocket which he believes to contain a purse, with the express intent to steal it, and who only fails in that intention by reason of the purse having been, unknown to the intending thief, removed, surely does everything necessary to constitute a crime. We have here unlawful act, criminal intent, not voluntarily abandoned, and only unsuccessful by reason of an accident of which the offender was ignorant, and which he in no way controlled. Similarly, a person breaking into a house with intent to steal ought surely not to escape, because it turns out, contrary to his expectation and belief, that the house contained nothing that can be the subject of stealing.

against this Code, each of them is to be deemed to have committed and be guilty of every offence committed by any one of them in furtherance of such common intention or incitement, if the jury find as a fact that the commission of such offence was a necessary or probable consequence of the carrying into effect of such common intention, or of the offence incited to be committed.

PART III.
acting in
common
accord

477. Every person is guilty as an accessory after the fact to an offence against this Code, and (unless special provision is otherwise made by this Code) liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Definition
and
punish-
ment
of an
accessory
after the
fact.

Who, knowing or having reasonable cause to believe that another has committed any offence against this Code, unlawfully does any act :

- (a) For the purpose of preventing the arrest of or of enabling any such offender to escape from apprehension, trial, or punishment ;
- (b) For the purpose of concealing or endeavouring to conceal the fact that any such offence has been committed ;
- (c) For the purpose of concealing or suppressing, or endeavouring to conceal or suppress, any evidence material to the proof of such offence ;
- (d) With a view to hinder or prevent any person from appearing and giving evidence against an accused person, or producing any document or thing material to the proof of the offence of which such person is accused ;

PART III.

- (e) With a view to persuade or induce any person, for any valuable consideration, not to prosecute or appear as a witness, or to refrain from adducing any particular evidence against any person for any offence against this Code; or for the like consideration agrees so to do, in either case, without obtaining, upon a full disclosure of the consideration so given, the leave of the Court before whom such person is charged;
- (f) With a view in any other way to prevent the lawful conviction of any person guilty of an offence against this Code, or the lawful carrying out of any sentence pronounced against any person convicted of any such offence.

Limitation
of punish-
ment of
accessories
after the
fact.

478. Provided that no person shall be liable to any greater punishment for being an accessory after the fact to any offence against this Code, than he would have been liable to had he been convicted of the offence to which he is an accessory after the fact.

Husband
or wife not
an ac-
cessory in
certain
cases.

And provided also that no husband or wife shall be deemed to be an accessory after the fact to any offence committed by his or her wife or husband respectively, by reason of his or her receiving or succouring his or her wife or husband respectively, or receiving or succouring, at the same time and jointly with such wife or husband, any other person who has been a party to the same offence, although knowing, or having reason to believe, that she or he, alone or jointly with such other person, has or have committed an offence against this Code.

479. Nothing in this Code contained shall be deemed to render unlawful or invalid, or shall affect or prejudice, any agreement entered into or any security given by any person, having for its object in good faith the restoration or repayment merely of any property or money obtained or acquired by any means which is declared to be an offence by this Code, save and except such restoration or repayment be accompanied by any act or agreement which is enacted an offence against this Code.

PART III.

An agreement entered into or security given for the restoration of property unlawfully acquired not to be invalid unless accompanied by some unlawful condition.

(IV.)—CONSPIRACY TO COMMIT OFFENCES.

480. A conspiracy to commit an offence is an agreement between any two persons (not being husband and wife), or between more than two persons :

Definition of conspiracy.

- (a) For the purpose of committing, or causing to be committed, any offence against this Code.
- (b) To do, procure, or accomplish anything whatsoever, whether lawful or otherwise, by means of any act or default, the commission of which by any person is an offence against this Code.

481. Whoever is convicted of any conspiracy, for which special provision is not otherwise made by this Code, shall be liable to be imprisoned, with or without hard labour, for any period not exceeding two years : provided that no person shall be liable to any other or greater punishment for conspiring to commit any offence for which no such special provision is made, than he would be liable to, under the provisions hereof, if he were convicted of having actually committed such offence.

Punishment of conspiracy

CHAPTER XIX.

OFFENCES.

TREASON.*

PART III. 482. Is guilty of the offence of treason, and liable,
 Definition upon conviction thereof, to be kept in penal servitude

* Treason was formerly of two kinds, viz. high treason and *petit* treason. The latter offence was "a breach of the lower allegiance of private and domestic faith," *e.g.* a wife killing her husband, or a servant his lord and master. "But when" (to quote Sir William Blackstone) "disloyalty so rears its crest as to attack even majesty itself, it is called, by way of eminent distinction, *high* treason." "By the ancient common law, there was a great latitude left in the breast of the judges to determine what was treason, or not so: whereby the creatures of tyrannical princes had opportunity to create abundance of constructive treasons; *i.e.* to raise, by forced and arbitrary constructions, offences into the crime and punishment of treason, which never were suspected to be such" ("Blackstone's Com." vol. iv. p. 72). In consequence, the statute 25 Edw. 3, c. 2, was passed, which defined what offences only for the future should be deemed treason, and these consist of five branches, viz.: 1. Compassing or imagining the death of the sovereign, or his queen consort, or of their eldest son and heir. By a fiction of law, many acts in no way threatening the life of the sovereign are held to be treason, under the definition of "imagining the sovereign's death;" and our law upon this head, except that *some overt act* is necessary, may be said almost to be leavened with something of the absurdity which led the Emperor Dionysius to execute a subject merely for dreaming that he had killed him, upon the ground that the unfortunate man must in his waking hours have contemplated his death. 2. Violating (although with her consent) the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir. It has been argued that the intention of this is to guard the blood royal from any suspicion of bastardy, whereby the succession to the crown might be rendered dubious; but the obvious fallacy of this is patent in the fact that the issue of the wife of a younger son of the king must inherit the crown before the issue of the

for life, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years : *—

PART III.
—
and
punish-
ment of
treason.

Whoever, being a natural born, or naturalized

king's eldest daughter, and yet intercourse with the wife of the king's youngest son is not within the statute. Moreover, adultery committed with the king's eldest daughter *after* her marriage is equally not within the statute, although the mischief would be obviously greater than to seduce her chastity before her marriage, when any child to which she might give birth would be clearly illegitimate. 3. Levying war against the king, which, by a legal fiction, includes acts far removed from those the natural construction of the words would appear to point to. 4. Being adherent to the king's enemy. 5. Slaying the chancellor, treasurer, or the king's justices, which cannot, upon any reasonable view, be treason. This statute was supplemented by 36 Geo. 3, c. 7, which enacts that if any person shall, within or without the realm, compass, imagine, or intend death, destruction, or bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the king, his heirs or successors; and shall express, utter, or declare such intention by publishing any printing or writing, or by any overt act, he shall be adjudged guilty of treason. And by a more recent statute (11 & 12 Vict. c. 12), certain offences known as treason-felony were created, the punishment upon conviction for which is penal servitude for life or any term not less than five years, or imprisonment, with or without hard labour, for any period not exceeding two years. The offences comprised within this statute are—compassing, imagining, inventing, devising, or intending: (a) to deprive or depose the queen, her heirs or successors, from the style, honour, or royal name of the imperial crown of the United Kingdom, or of any of Her Majesty's dominions and countries; (b) to levy war against Her Majesty, her heirs or successors, within any part of the United Kingdom, in order, by force or constraint, to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, both or either House of Parliament; (c) to move or stir any foreigner or stranger with force to invade the United Kingdom, or any other of Her Majesty's dominions and countries; and expressing, uttering, or declaring such compassing, imagining, invention, device, or intention by publishing any printing or writing, or by any overt act.

There appears to be now no real reason for the distinction between treason and treason-felony, and I have ignored it. The offence of *petit* treason, which was punishable in the case of a man by drawing and hanging, and in the case of a woman by drawing and burning, was abolished by 9 Geo. 4, c. 31, s. 2.

* The punishment authorized by the law of England to be inflicted

PART III. subject of the Sovereign for the time being of these realms in any part of the world :

Attempts
to kill
the Sove-
reign, or
his heir or
consort ;
or to do the
Sovereign
grievous
bodily
harm ; or
to subject
him to
physical
restraint,
with a
view to
coerce.

(a) Does or causes to be done any act with the express intent, and reasonably calculated, to kill or destroy the reigning Sovereign for the time being of these realms, or his heir apparent or presumptive, or the queen-consort of such Sovereign (if a King *) ; or to do the Sovereign for the time being of these realms grievous bodily harm ; or by force to deprive or depose such Sovereign of or from his royal title and dignity of Sovereign of the United Kingdom, or any other of his dominions or dependencies ; or to place unlawful physical restraint upon the person of such Sovereign, with a view to prevent or coerce him in the exercise of his constitutional rights, power, and authority.

Levying
war
against
the Sove-
reign.

(b) Levies war against the Sovereign for the time being of these realms, with intent :

(i.) To depose such Sovereign from his royal title

upon persons convicted of high treason was, even in quite modern times, hideous and revolting. Thus, prior to 1814, the sentence upon any such persons, being males, was that "they be drawn on a hurdle to the place of execution, and there be hanged by the neck, *but not until they are dead* ; but that they should be taken down again, *and that when they are yet alive their bowels should be taken out and burnt before their faces*, and that afterwards their heads should be severed from their bodies, and their bodies be divided into four quarters, and their heads and quarters be at the king's disposal" (*vide* preamble to 54 Geo. 3, c. 146). Until the year 1790, any *woman* convicted of high treason was liable to *be burnt alive*. At present the punishment of any person convicted of high treason is death by hanging ; but Her Majesty may, after sentence, by warrant under her sign manual, countersigned by a principal Secretary of State, change the sentence into beheading (*vide* 54 Geo. 3, c. 146, and 33 & 34 Vict. c. 23). As has been stated previously, the punishment for treason-felony is penal servitude for life or not less than five years, or imprisonment not exceeding two years. I propose that the punishment of treason should be assimilated to that of treason-felony.

* No treason can be committed against the husband of a queen-regnant (1 Hale, P. C. 106).

and dignity of Sovereign of the United Kingdom, or any other of his dominions or dependencies ;

- (ii.) By force to compel the Sovereign to remove his councillors, or otherwise to redress grievances, real or alleged ;
- (iii.) To coerce or intimidate the Houses of Parliament, or either of them.

(c) Instigates any foreign power or person to invade this realm, or any dominion or dependency of the Crown.

Inciting foreign power to invade these realms.

(d) In any way aids, abets, or assists any foreign power or person at war with the Sovereign for the time being of these realms, by any means whatsoever.

Aiding foreign power at war with the Sovereign.

(e) With the express intent to do or cause to be done either of the acts in either of the preceding sub-clauses mentioned, publishes anything printed, written, or otherwise rendered legible to any person, with a view, and reasonably calculated, to incite any person to commit or cause to be committed either of the offences in the said sub-clauses respectively mentioned.

Publishing anything with intent to incite to commission of either of the said unlawful acts.

(f) With the like express intent in any manner incites, advises, or commands, or knowingly joins or aids, or combines or conspires with, any person whatever to commit or cause to be committed either of the said offences.

Inciting or conspiring to commit any of the said unlawful acts.

Provided that no words, whether written or spoken, or expressive merely of an intention to commit either of the said offences, or of an opinion in reference thereto, shall be deemed to constitute the offence of treason, unless such words are directly connected with the actual execution of one or other of the said results.

Proviso.

PART III.

Setting
fire to or
destroying
ships of
war, etc.

(g) Unlawfully and wilfully, in time of war, sets on fire, burns, or otherwise destroys :

- (i.) Any of the ships or vessels of war of the Sovereign for the time being of these realms, whether afloat, or building, or begun to be built, or under repair for the use of the Sovereign, in any dock-yard, public or private ;
- (ii.) Any of the Sovereign's arsenals, magazines, dockyards, factory yards, ropeyards, victualling offices, or any of the buildings erected therein or belonging thereto ;
- (iii.) Any timber or materials there placed for building, repairing, or fitting out of ships or vessels ;
- (iv.) Any of the Sovereign's military or naval or victualling stores, or other ammunition of war ;
- (v.) Any place where any such military, naval, or victualling stores, or other ammunition of war is or are, or is or are kept or deposited.*

Limita-
tion with-
in which
prosecu-
tion for
treason
may be in-
stituted,
and what
evidence

483. No person shall be apprehended or tried for treason, or being accessory to treason, unless within one year next after the offence is alleged to have been committed ; or, in any case in which the alleged offender cannot, by reason of his absence from the United Kingdom, be apprehended, unless an in-

* This sub-clause (g) is framed upon 12 Geo. 3, c. 24, but with the substitution of penal servitude for life in lieu of death, which is the penalty prescribed by that statute. The words "in time of war" are new. The like acts committed other than in time of war would be punishable under subsequent clauses relating to malicious injuries to property.

formation, in writing and on oath, is laid before a magistrate or justice within whose jurisdiction the offence is alleged to have been committed, and a warrant granted by such magistrate or justice for the apprehension of such person for such offence within twelve months next after the offence is alleged to have been committed.* And no person shall be convicted of treason, unless such offence be proved against him by at least two credible witnesses, neither of whom shall be a common informer, approver, or accomplice.

PART III.
—
necessary
to a con-
viction for
treason.

484. No person convicted of treason after the coming into force of this Code shall be liable to any punishment, for or in respect of such offence, save such as is enacted by this Code.

Treason to
be pun-
ished only
as enacted
by this
Code.

485. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for any term not exceeding ten years, or any lesser term for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any term not exceeding two years :—

Punish-
ment of an
accessory
after the
fact to
treason.

Whoever, being a natural born or naturalized subject of the Sovereign for the time being of these realms in any part of the world, becomes an accessory after the fact to the offence of treason.†

* The limitation is at present three years (*vide* 7 & 8 Will. 3, c. 3, s. 5).

† There is another offence known to our present law, which involves to any person convicted of it very serious consequences, viz. misprision of treason, which consists in knowing that any person has been guilty of treason, and not informing against him. So severe is the law upon this subject that, in violation of the general principles of English law, a wife is bound to denounce her own husband, or a husband his wife, and either is guilty of misprision if he or she fail to do so. The punishment is *imprisonment for life*, and forfeiture of goods and lands.

It is, however, worthy of remark, that by our present law no one commits any offence by reason only of his knowing that any person has

PART III.

ASSAULTS ON THE SOVEREIGN.

Definition and punish- 486. Is guilty of an offence, and liable, upon conviction thereof, to be sentenced to penal servitude for

committed an offence, of whatever gravity (other than treason), and not giving information. I submit that there is now no reason for the exception which has hitherto prevailed, and misprision of treason, therefore, is not an offence included in this draft Code. *Concealing* the fact that felony has been committed, which I understand to mean something more than a mere *passive* indifference, is an offence at common law (*vide* 1 Hawk. P. C. 73).

Similarly, violations of the privileges of ambassadors or their servants, and libels on foreign princes or dignitaries, which are at present criminal offences, find no place here. The first are capable of ample protection, without being elevated into the category of criminal acts; whilst, in reference to the latter, Englishmen have presumably little wish to see introduced into this country a system of prosecution of which too much has been heard in a neighbouring empire, where recently, in a few weeks, we are told, the accumulated sentences passed upon various persons, for what are called insults upon the Sovereign, have amounted to no less than a thousand years! What little criticism is apparently sufficient to wound the susceptibilities of exalted personages, and to sustain by the law of England a charge of libelling a foreign prince, may be judged from the circumstance that, in 1787, Lord George Gordon was convicted for representing the then Queen of France as "the leader of a faction;" whilst in 1801 took place the trial of Vint for writing of the Emperor Paul: "The Emperor of Russia is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency. He has lately passed an edict to prohibit the exportation of deal and other naval stores. In consequence of this ill-judged law, a hundred sail of vessels are likely to return to this country without freight."

It would certainly appear to be high time that a law which proscribes and renders criminal by the law of England such criticism as this upon the public conduct of foreign potentates should be abrogated.

If the object of the existing law be to preserve friendship between this country and foreign states, it is open to the observation that an acquittal upon a charge of having libelled some foreign power, which would probably result in any trial of really serious importance, would do more to impair and endanger such friendship, than the non-existence of a law which should render such trials possible in England. Again, what, for instance, more (to us) humiliating spectacle could be witnessed than a criminal prosecution directed against an ex-Premier of England—one who is acknowledged to be a great power in the State, and is yet destined, probably, to exercise most important influence in the councils

seven years, or for any lesser term for which penal PART III.
servitude may be lawfully awarded, or to be im-
prisoned, with or without hard labour, for any period ^{ment of}
not exceeding two years :— ^{assaults}
on the
Sovereign.

Whoever wilfully, and with intent to injure the person of the Sovereign for the time being of these realms :

- (a) Produces, or has near the person of the Sovereign, any arm, or destructive or dangerous thing ;
- (b) Points, aims, or presents at or near the person of the Sovereign any firearm ;
- (c) Discharges at or near the person of the Sovereign any loaded arms ;
- (d) Discharges, or causes to be discharged, any explosive or destructive material near the person of the Sovereign ;
- (e) Strikes, or strikes at, the person of the Sovereign with any offensive weapon ;
- (f) Throws any dangerous missile or thing * at or upon the person of the Sovereign ;

of the nation—for his written philippics against Turkey and its rulers ; or a prosecution in our criminal courts attempted against any English statesman for the publication of matter, in England, calculated (because expressly intended in the interest of humanity) to “revile, or expose to contempt”—to use the legal phraseology applicable to libels—a Turkish dignitary in relation to horrors committed in Bulgaria, or a dignitary of Russia in respect of cruelties perpetrated in Poland ?

In short, there exist the most cogent reasons for not giving to this antiquated law the new sanction and additional force which it would derive if re-enacted in a modern Code.

* Section 2 of the 5 & 6 Vict. c. 51, makes it an offence, punishable with seven years' penal servitude, to throw “anything” at or upon the person of the Queen, with intent to break, or so as to endanger, the public peace. The same statute likewise enacts that, in lieu of a sentence of seven years' penal servitude, imprisonment, with or without hard labour, for any term not exceeding three years, may be awarded ; and that the offender

PART III.

(g) Attempts to do either of the things specified in sub-clauses (c), (d), (e), or (f).

PUBLIC CONTEMPTS AGAINST THE SOVEREIGN.

Punish-
ment and
definition
of public
contempts
against
the Sove-
reign.

487. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment as a misdemeanant for any term not exceeding one year :—

Whoever is guilty of any contempt against the person of the Sovereign for the time being of these realms, by means of any insulting words, acts, or gestures uttered or done in public. Provided that no one shall be deemed to commit an offence within the meaning of this clause, by reason only of his stating or publishing any expression of opinion or comment upon, or of, or concerning the Sovereign, in relation to any matter that is a legitimate subject of public discussion or criticism.*

(apparently including a woman) may, in addition to this severity, be publicly or privately whipped as often, not exceeding thrice, and in such manner, as the Court directs.

* It is an offence at common law to commit any contempt against the person of the Sovereign or her royal dignity (*vide* 1 Hawk. P. C., c. 6). This extends even to words uttered in private. I have, in framing this clause, purposely omitted the words making it an offence to commit any contempt against the "dignity" of the Sovereign, as being, in any view, too indefinite. I have also confined the offence to acts or insults done *in public*. It is, however, open to very grave question whether any contempt of the Sovereign which does not amount either to treason or sedition, ought to be brought within the category of crime. The *gravamen* of the offence consists in the danger of provoking a breach of the peace by conduct or language offensive to the sovereign, committed or uttered in public. But the same observation would apply equally (although possibly in a somewhat diminished degree) to similar insults, directed against other members of the royal family, and other personages, notably, *e.g.*, the dignitaries of religious denominations.

The true remedy would, therefore, appear to be to view all such insulting words, acts, or gestures, uttered or committed in public, offences against the public peace, embraced within the summary jurisdiction of magistrates and justices, who should be empowered to require the offender

RIOT.*

PART III.

488. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, with or without hard labour, for any term not exceeding one year :—

Definitions
and
punish-
ment.

Whoever, being three or more persons, assemble

Three or
more

to enter into recognizances, with or without sureties, according to the circumstances, to be of good behaviour and keep the peace.

Other contempts, *e.g.* contempts against the royal palaces by executing therein the ordinary process of law, are likewise criminal offences by the present law, which, however, is probably only suffered to remain unrepealed because public attention is never directed by any attempt to enforce it.

Down to so recently as the ninth year of the reign of George IV., one form of contempt against the royal palaces was punishable with perpetual imprisonment *and the loss of the offender's right hand* (*vide* 3 Hen. 8, c. 12, and 9 Geo. 4, c. 31).

* There exists at common law an offence akin to riot, known as an *unlawful assembly*, which is variously defined. Thus, the definition laid down by Hawkins is: "A meeting of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the subjects of the realm" (*vide* 1 Hawk. P. C., c. 65, s. 23). Baron Alderson in more recent times, in *Reg. v. Vincent* (9 C. & P. 91), defined an unlawful assembly to be: "Any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood." I cannot think that if a statute were now presented to Parliament, proposing for the first time to create such an offence, and, particularly, to define it so vaguely, it would have the slightest chance of passing into law. It would at once raise, throughout the country, a cry that that most valued of popular liberties, the right of public meeting, was in jeopardy. Frame the definition as one will, there must be danger lest, in some period of exceptional excitement, the law may be strained, or attempted to be strained, to interfere with the public meeting of citizens, held to discuss grievances. It is one thing that an almost obsolete law should exist; another that it should receive all the added strength it would derive from being deliberately re-enacted by the legislature.

I submit that the criminal law embodied in this draft Code is amply sufficient, without creating the substantive offence of unlawful assembly, to punish every assembly which ought to be deemed criminal; as, *e.g.*, an assembly of persons with intent to commit, or incite to the commission of, an offence which would be punishable, at the least, as a conspiracy or incitement to commit the offence, and, if it were in fact committed, might render all persons knowingly taking part in the assembly at which its

PART III.

persons assembling in public place, and by any violent or turbulent and threatening conduct excite terror.

together in any public highway, and by means unlawfully of any violent or turbulent and threatening conduct excite terror in the mind of persons in the neighbourhood generally, or of any person or persons towards whom such violent or turbulent and threatening conduct is specially directed.

Every person is a rioter who commits an offence under the provisions of this clause.

489. Is guilty of an offence, and liable, upon con-

commission was accomplished or incited, accessories before the fact, and therefore punishable as principals (*vide* clauses 472, 473, 476, 477, and 480 of this draft Code). But to define it to be an offence for three or more persons to assemble together, to carry out of a common purpose (which may be of itself perfectly lawful), in such a manner as to give persons of ordinary firmness and courage in the neighbourhood reasonable grounds to apprehend that a breach of the peace *may* result in consequence of it—which is a definition of an unlawful assembly given in Stephen's "Digest of the Criminal Law," p. 41, founded upon other authorities—or to give, at the present hour, legislative sanction to Baron Alderson's definition, would be for Parliament to bring under the ban of criminality, and to justify the dispersion by force of, public meetings, the legitimate enthusiasm of which may serve as a pretext, aided possibly by prejudice against the object with which the meeting is held, for apprehension of a breach of the peace.

Another instance of unlawful assembly, which was raised into a criminal offence by 57 Geo. 3, c. 19, is any meeting of more than fifty persons, held in any street, square, or open space within a mile of Westminster Hall, for the purpose or under pretext of considering or preparing any petition or address to the Sovereign or either House of Parliament—a law which is habitually set at nought, as witness the meetings held in Trafalgar Square; and which it will be a gain, rather than otherwise, to repeal.

It is probably not very generally known that it is a misdemeanour, punishable with fine and imprisonment, to solicit or procure the signature of more than twenty persons to any petition or address to the Sovereign or either House of Parliament, unless by authority of three or more justices of the peace, or the major part of the grand jury at any assizes or quarter sessions, or (in London) of the lord mayor, aldermen, and commons in council assembled; or to repair to the Sovereign or either House of Parliament, for the purpose of presenting any petition or address, accompanied by more than ten persons at any one time (*vide* 13 Car. 2, c. 5). This obsolete statute I also propose should be repealed.

viction thereof, to be sentenced to penal servitude PART III.
 for any period not exceeding seven years, or for
 any lesser period for which penal servitude may be
 lawfully awarded, or to be imprisoned, with or with-
 out hard labour, for any period not exceeding two
 years :*—Whoever :

- (i.) Being twelve or more persons unlawfully assembled to the disturbance of the public peace, continue so assembled together to that number (a) for the space of one hour after any justice of the peace, sheriff, under-sheriff, mayor, or other officer duly authorized by law in that behalf, shall, to their knowledge, have directed them by proclamation to disperse, pursuant to the provisions of the statute commonly known as the "Riot Act" (1 Geo. 1, st. 2, c. 5) ; or (b) for the space of one hour after the said proclamation to disperse ought to and
- Twelve or more persons continuing assembled together after reading of proclamation authorized by the "Riot Act."
 Or for one hour after time when

* The offences comprised in this clause are now punishable with penal servitude for life by 1 Geo. 1, st. 2, c. 5. There is now no reason for this severity. The offence of riot was originally high treason, by 3 & 4 Edw. 6, c. 5; but this statute was repealed by 1 Mary, c. 1, and the offence re-enacted as a felony. This Act, which was levelled against riots, feared in consequence of the then intended change in the established religion of the country, was to endure for one year only, but it was afterwards continued during the queen's life. Upon the accession of Elizabeth, when a reformation in religion was to again take place, the statute was revived and continued during her life, when it expired. From the accession of James I. to the death of Queen Anne, it was never once thought expedient to revive it; but in the first year of the accession of George I., it was judged necessary, in order to support the carrying out of the Act of Settlement, to renew it, and it was then made perpetual, with important additions.—Stephen's (Blackstone's) Com., vol. iv., p. 335.

Amongst other provisions is an indemnity to any one who kills, maims, or hurts any persons riotously assembled, in the act of dispersing them (1 Geo. 1, st. 2, c. 5, s. 4).

PART III.

proclamation would have been made unless prevented.

Opposing reading of proclamation.

Limitation of time for instituting a prosecution.

Riotously demolishing buildings, etc.

would have been made, in case the reading of the said proclamation was by force opposed, or the reader thereof wilfully hindered in the reading thereof, to the knowledge in either case of the said persons.

- (ii.) Opposes by force, or otherwise knowingly and wilfully hinders or prevents, any justice, sheriff, under-sheriff, mayor, or other officer duly authorized by law in that behalf in or from reading the said proclamation.

490. No person shall be prosecuted for any offence comprised in clauses 487, 488, and 489, inclusive, unless such prosecution be commenced against him within twelve months next after the offence is alleged to have been committed.

491. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, being three or more persons riotously assembled together, unlawfully and with force demolish, pull down, plunder, or destroy wholly or in part, or begin so to do, any building, erection, or machinery whatsoever, whether the same be fixed or movable; or any structure or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine; or any ship, vessel, barge, or boat, whether the same be stranded, in distress, or otherwise howsoever.

492. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for any period not exceeding seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, being three or more persons riotously assembled together, unlawfully and intentionally, and with force, injure or damage either of the things in the last preceding clause mentioned.

Riotously
injuring
buildings,
etc.

ILLEGAL DRILLING AND TRAINING.

493. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment as a misdemeanant, for any term not exceeding one year :*

Definition
and
punish-
ment of
illegal
drilling
and
training.

Whoever knowingly :

- (a) Attends or is present at any meeting or assembly of persons, held for the purpose of training or drilling themselves, or being trained or drilled to the use of arms or any military practice, for any unlawful purpose ;
- (b) At any such meeting is drilled or trained to the use of arms or any military practice ;
- (c) Attends or is present at any meeting or assembly held for the purpose of training or drilling any other person to the use of arms or any military practice, for any un-

* The offences comprised in sub-clauses (c) and (d) are now punishable with penal servitude for a term not exceeding seven years, or imprisonment not exceeding two years. The offences (a) and (b) are punishable with fine and imprisonment not exceeding two years (60 Geo. 3 & 1 Geo. 4, c. 1).

PART III.

lawful purpose, or knowingly aids or assists therein ;

- (d) At any such meeting or assembly trains or drills any other person to the use of arms or any military practice.

Meetings for above purposes illegal, and may be dispersed. Limitation of time for instituting a prosecution.

Any such meeting or assembly is unlawful, and may be dispersed by any magistrate, justice of the peace, constable, or officer of the peace.

494. No one shall be prosecuted for any offence under the last preceding clause, unless the prosecution is commenced within six months next after the offence is alleged to have been committed.*

SEDUCING SOLDIERS FROM THEIR ALLEGIANCE, OR INCITING TO MUTINY.

Definition and punishment of offences.

495. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years, or for any lesser term for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any term not exceeding two years :—

Whoever endeavours :

- (a) For any traitorous or mutinous purpose, to seduce any person serving in the forces of the Crown, by sea or land, from his duty and allegiance ;
- (b) To stir up or incite any such person to mutiny, or to any traitorous or mutinous practice ;
- (c) To create any assembly with a view to mutiny, or any traitorous or mutinous practice.

* This is the limitation fixed by 60 Geo. 3 & 1 Geo. 4, c. 1, s. 7.

This clause shall apply to all acts done by any natural born or naturalized subject of the Sovereign for the time being of these realms, in any part of the world.

PART III.
Applica-
tion of
clause.

UNLAWFUL OATHS.

496. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, with or without hard labour, for any period not exceeding two years : *—

Definition
and
punish-
ment.

Whoever administers or tenders, or causes to be administered or taken by or tendered to any person, or himself takes, any oath or engagement intended to bind any person (*a*) in any mutinous or seditious purpose ; (*b*) to belong to any mutinous or seditious society or confederacy ; (*c*) to obey, in order to carry out any unlawful purpose, any committee, or any person not having legal authority ; (*d*) not to inform or give evidence against any confederate or other person engaged in any unlawful purpose ; (*e*) not to discover or inform against any unlawful combination or illegal act or engagement.

SEDITION.

497. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment as a misdemeanant for any term not exceeding two years :—

Definition
and
punish-
ment of
sedition.

Whoever speaks in public, or, knowing the con-

* The taking of these oaths is at present punishable by penal servitude for a term not exceeding seven years (37 Geo. 3, c. 123)—a severity which, however, may well be relaxed ; especially seeing that, if the conduct or object of any person administering or taking an unlawful oath should be of a grave character, he would probably bring himself within the definition of a far more serious offence, and would, in that case, be liable to receive adequate punishment. (See also note, p. 250.)

PART III. tents and meaning thereof, publishes, exhibits, or causes to be exhibited, or received by any person, any words, matter, writing, or sign marked or otherwise denoted upon any substance, or in any way rendered visible, expressly intending thereby and reasonably calculated :

- (i.) To bring into hatred or contempt, and to excite unlawful disaffection against, (a) the Sovereign of these realms for the time being; (b) the Government and Constitution of the United Kingdom as by law established; (c) either House of Parliament; (d) the administration of public Justice;
- (ii.) To excite the people to attempt to procure, otherwise than by lawful means, the alteration of any State matter for the time being by law established;
- (iii.) To raise discontent and disaffection amongst the people.

Proviso.

Provided that no one commits an offence against this clause only by reason of his endeavouring or intending to show or point out (a) errors or defects, whether real or otherwise, in the conduct of the Sovereign, or the Government or Constitution of the United Kingdom, or any part of it, for the time being as by law established, or in the administration of public justice; (b) that in the opinion of the speaker, writer, publisher, or other person, some form of Government or Constitution, other than or however differing from that by law established for the time being, would or might be preferable. Or by reason only of his endeavouring or intending (c) to

incite people to attempt to procure, by any lawful means whatsoever, the alteration of any State matter for the time being by law established; (d) to point out, with a view to its removal or amendment, any matter which is believed to be producing, or to have a tendency to produce, feelings of hatred and ill-will between different classes of Her Majesty's subjects.

498. No person by reason only that he is the proprietor, either wholly or in part, of any periodical publication is responsible for any sedition published therein, unless the same is proved to have been published with his actual knowledge and authority. A general authority given by any such proprietor to any person to manage, or exercise his discretion in the conduct of, any periodical publication, is not an authority within the meaning of this clause, unless the publication of such matter is shown to have been expressly intended by such general authority, or unless such proprietor has expressly and knowingly concurred in the publication of sedition in any issue of such periodical publication.

Proprietor of a periodical publication not liable for seditious matter published therein without his knowledge and authority.

499. No one commits an offence by disposing of, or exposing for sale, in the ordinary course of trade, any book, periodical publication, or other matter printed or otherwise rendered legible, unless it is proved that he knew that the same contained sedition, or, in the case of a periodical publication, that he knew that the issues of such periodical publication habitually contained sedition.

Protection to persons innocently selling books and other publications which contain sedition.

PIRACY.

500. Is guilty of an offence, and liable, upon con-

Definition

PART III. viction thereof, to penal servitude for life, or for any
and lesser term for which penal servitude may lawfully be
punish- awarded, or to be imprisoned, with or without hard
ment of labour, for any term not exceeding two years :—
piracy.

(a) Whoever, whether a subject of or owing allegiance to the Sovereign for the time being of these realms, or any other person whatsoever, (i.) without lawful authority cruises on the high seas, or in any foreign waters where the tide ebbs and flows and great ships frequent, and commits or endeavours to commit there any act of robbery, violence, depredation, or injury which, if committed in England, would be an offence against this Code; (ii.) with intent to commit, or at the time of or immediately before or after committing, any such act of robbery, violence, depredation, or injury as aforesaid, assaults with intent to murder, or stabs, or wounds, or unlawfully does any act by which the life of any person on board of or belonging to any ship or vessel is or may be endangered.*

(b) Whoever, being a natural born or naturalized subject of the Sovereign for the time being of these realms, commits upon the high seas, or in any foreign waters where the tide ebbs and flows and great ships frequent, any act of robbery or hostility against any other of the Sovereign's sub-

* The punishment at present for the acts comprised in this portion of the clause is death (*vide* 1 Vict. c. 88, s. 2).

jects, under colour of any commission from any foreign power or state; or under pretence of authority from any person whatever. PART III.

- (c) Whoever, belonging to any ship or vessel whatever (whether being a British subject or not), upon meeting any merchant ship or vessel on the high seas, or in any foreign waters where the tide ebbs and flows and great ships frequent, forcibly boards and enters into such ship or vessel, and, even though he do not seize or carry off such ship or vessel, throws overboard or destroys any part of the goods or merchandise belonging thereto or therein.
- (d) Whoever, being in any capacity whatever on board any British ship on the high seas, or in any foreign waters where the tide ebbs and flows and great ships frequent (whether or not a British subject), (i.) unlawfully seizes and runs away with such ship; or voluntarily yields up the same to any pirate; (ii.) assaults the commander for the time being of such ship or vessel, with a view to hinder, or otherwise unlawfully by force hinders or endeavours to prevent, such commander from fighting or protecting his ship or vessel against any persons engaged in piracy, with the express intention that such ship or vessel shall fall into the hands of such pirates; (iii.) unlawfully confines the commander, or places him under restraint, or forcibly deprives

PART III.

him of his command; or causes or endeavours to stir up a revolt, or does any other unlawful act, on board any such ship or vessel; in either case, with a view unlawfully to obtain possession of such ship or vessel, or any of the boats, furniture, or tackle thereof, or goods therein.

- (e) Conspires with or incites any person to commit either of the offences in the several sub-sections of this clause mentioned.

Definition
of terms
"pirate,"
and "en-
gaged in
piracy."

Every person is deemed a pirate, and to commit or be engaged in piracy within the meaning of this Code, who commits either of the offences in this clause mentioned.

Aiding
pirates.

501. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years, or for any lesser period for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any term not exceeding two years:—

Whoever, being a subject of or owing allegiance to the Sovereign for the time being of these realms, in any part of the world; or, not being a British subject in any part of the Sovereign's dominions, or on board any British ship, either on the high seas, or in any foreign waters where the tide ebbs and flows and great ships frequent:

- (a) Trades with any person whom he knows to be engaged in piracy;
- (b) Furnishes to any such person any stores, provisions, or ammunition;
- (c) Fits out, either wholly or in part, any ship

or vessel intended to be engaged or used PART III.
for or in aid of piracy;

- (d) In any wise unlawfully aids, consults, combines, confederates, or corresponds with any person engaged in piracy; or incites any person to commit or engage in piracy.

502. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment for any period not exceeding six months:—

Whoever, being the commander for the time being of any ship or vessel carrying guns and arms attacked by any pirate, or by any ship on which any pirate is on board, and being able so to do, does not defend the said ship or vessel and endeavour to prevent the same from being taken by such pirate, or does any act with the express intention that such ship or vessel shall fall into the hands of such pirate; or utters any words to discourage the other mariners from defending the ship, so that the ship falls into the hands of such pirate. Not fighting pirates.

SLAVE TRADING.

503. Is guilty of an offence against this Code, and liable, upon conviction thereof, to be sentenced to penal servitude for twenty years, or for any lesser term for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years:— Punishment.

Whoever, being a person owing allegiance to the Sovereign of these realms for the time being, knowingly, in any part of the world, or, not being a Definition of acts constituting

PART III. British subject, in any part of the Sovereign's dominions, does or contracts to do any or either of the acts following, that is to say :

slave
trading.

- (a) Deals or trades in, purchases, sells, barter, or transfers any slave, or person intended to be dealt with as a slave ;
- (b) Carries away, or removes, or imports or brings into any place whatsoever, any slave or other person, as or in order to his being dealt with as a slave ;
- (c) Ships, tranships, embarks, receives, detains, or confines on board of any ship, vessel, barge, or boat, any slave or other person for the purpose of his being carried away, or removed, or imported, or brought into any place whatsoever, as or in order to his being dealt with as a slave ;
- (d) Fits out, mans, navigates, equips, despatches, uses, employs, lets or takes to freight, or on hire, any ship, vessel, barge, or boat, in order to accomplish any or either of the objects, or contracts in relation to the objects, declared unlawful by the last preceding sub-clauses (a), (b), (c), respectively ;
- (e) Lends or advances, or becomes security for the loan or advance of, money, goods, or effects, or for agents employed, or to be employed, in accomplishing any of the objects or contracts declared unlawful by the said sub-clauses respectively ;
- (f) Engages directly or indirectly, as a partner, agent, or otherwise howsoever, in any or either of the said objects or contracts ;

- (g) Ships, tranships, lades, receives, or puts on board of any ship, vessel, or boat, money, goods, or effects to be employed, in any way whatsoever, in accomplishing any or either of the said objects or contracts respectively ;
- (h) Takes the charge or command, navigates, or enters and embarks on board of any ship, vessel, or boat as captain, master, mate, surgeon, supercargo, or in any like or similar capacity whatsoever, knowing that such ship, vessel, or boat is actually employed, or is then intended to be employed, in accomplishing any or either of the said objects or contracts respectively ;
- (i) Insures any slave, or any property or other subject matter engaged or employed, or intended to be engaged or employed, in accomplishing any or either of the said objects or contracts respectively.

504. Is guilty of an offence against this Code, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Punishment of seamen knowingly serving on board slave-ship.

Whoever enters or embarks on board, or contracts to enter or embark on board, of any ship, vessel, barge, or boat as or in the capacity of a petty officer, seaman, marine, servant, or any like or similar capacity, other than as mentioned in sub-section (h) of the last preceding clause, knowing that such ship, vessel, or boat is actually employed, or is then intended to be em-

PART III. ployed, in accomplishing any or either of the objects or contracts in relation to the objects declared unlawful by sub-clauses (a), (b), (c) of such clause respectively.

Forfeiture
of ships,
etc., used
in carry-
ing on
slave
trade.

505. Every ship, vessel, barge, or boat used in or about the commission of either of the offences comprised in clause 503, together with all her boats, guns, tackle, apparel, and furniture; and all property, goods, and effects found on board belonging to the owner or owners, part owner or part owners, of any such ship, vessel, or boat; and all property or pretended property in all slaves, or persons intended to be dealt with as slaves, may be seized, and shall be absolutely forfeited. Such forfeiture shall be in addition to any sentence of penal servitude or imprisonment by such clause authorized.

MURDER.*

Definition
and
punish-
ment of

506. Is guilty of an offence, and, upon conviction thereof, shall suffer death :—

Whoever intentionally commits any unlawful act

* The English law of homicide is difficult, complex, and admittedly unsatisfactory. It would be out of place to review it here. The subject is elaborately treated by various text-writers, and in the last edition of Russell on Crimes it occupies upwards of two hundred pages. It abounds with fictions which are dishonouring to justice. The above definition is framed upon a principle that, I believe, will command very general approval—anything like unanimity is hopeless on a question of this kind—viz. that the crime of murder should be limited to what may be popularly described as killing in cold blood, *i.e.* killing of malice aforethought, in the true and literal sense of those words, and not the distorted sense given to them by judicial decisions, which, as a learned commentator has well said, were mere devices by which the judges were enabled to hang anybody whom they were pleased to consider ought to be hanged (see Preface to this Code, p. xviii.); and that any other form of unlawful homicide should be defined and treated as manslaughter.

from which the death of any person results, having, at the time such act was committed, the express intention, formed deliberately and without provocation, unlawfully to cause the death either of the person whose death is caused, or of any other person whatsoever.

PART III.
wilful
murder.

An intention which is formed and acted on suddenly, in the heat of passion caused by a wrongful and unprovoked act or omission of such a nature as to be reasonably calculated to deprive any ordinary person of the power of self-control, is not an intention formed "deliberately and without provocation," within the meaning of this clause.

Definition
of "de-
liberately
and with-
out provo-
cation."

This clause extends to any act committed in any part of the world, by any person owing allegiance to the Sovereign for the time being of these realms.

Applica-
tion of
clause.

The expression "unlawful act" in this clause means and includes :

Definition
of "unlaw-
ful act."

(i.) Any act which is an offence against this Code; or for which any punishment or penalty may be awarded, upon summary conviction before any magistrate or justices of the peace, or for which any person may be ordered to enter into recognizances to keep the peace, by virtue of any law now or hereafter in force; or in respect of which an action of *tort* may be maintained.

(ii.) Any intentional omission or culpable neglect to perform any duty (*a*) which is imposed by law; (*b*) which the person committing such omission or neglect has taken on himself the duty of performing,

PART III.

by virtue of any contract, either written or verbal; (*c*) which such person has taken upon himself the duty of performing, by reason of some wrongful act on his part.

- (iii.) Any omission, in the performance of any such duty as is mentioned in the last preceding sub-clause (ii.), to use an ordinarily reasonable amount of knowledge, skill, caution, or attention, where such duty consists in administering surgical or medical treatment, or in the performance of any other lawful act which is or is likely to be attended with danger, which any person has undertaken respectively to administer or perform.

Definition
of ex-
pression
“from
which
death
results.”

The expression, “from which death results,” does not include any case where death would not in fact have resulted from an unlawful act, except in consequence of (*a*) the subsequent wilful or negligent conduct of the person whose death results; (*b*) surgical or medical treatment not employed in good faith, or employed without ordinarily reasonable knowledge, skill, or caution, and from which death results.

In what
case jury
may, in
trial for
murder,
find ac-
cused
guilty of
man-
slaughter.

507. Upon the trial of any person accused of murder, the jury may find the accused guilty of manslaughter, if they shall be of opinion that the death of the person killed was unlawfully caused by the accused, but without the express intention to kill either the person whose death was so caused, or any other person whatsoever.

508. In every case in which, under this Code, PART III. sentence of death is authorized to be passed, the Court whose duty it is to give judgment shall pronounce such sentence. The Court shall pronounce sentence of death.

509. Whenever any female is convicted of murder and shall allege, or the Court before whom she is tried and convicted has otherwise reason to suppose, that she is pregnant, the Court shall take such means as may appear to it to be proper and necessary to verify the fact; * and if it appear that such woman is in fact quick with child, the Court shall respite sentence until after she is delivered, or it is no longer possible in the course of nature that she should be so delivered. Respite of woman convicted of murder who is found to be pregnant.

MANSLAUGHTER.

510. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser period for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :— Definition and punishment of manslaughter.

Whoever knowingly and intentionally commits any unlawful act wherefrom death results, such act not being done with an express intent, formed deliberately and without provocation, as hereinbefore defined, unlawfully to cause the death either of the person killed, or of any other person whatsoever.

The expression “unlawful act” in this clause has the same meaning as it is defined to have in clause 506.

This clause shall extend to any act committed in Applica-

* The present practice is to empanel a jury of twelve matrons. A more simple and preferable course will readily suggest itself.

PART III. any part of the world, by any person owing allegiance
 tion of to the Sovereign for the time being of these realms.
 clause.

INFANTICIDE.

Definition
 and
 punish-
 ment of
 infanti-
 cide.

511. Is guilty of an offence, and liable, upon conviction thereof, to the same punishment as is enacted by this Code in the case of any person convicted of manslaughter :—

- (a) Any woman who knowingly and intentionally does any unlawful act from which the death of her child results, either whilst such child is in the act of being born, or immediately after its birth, being at the time of committing such act deprived of the ordinary power of self-control, by reason of physical or mental suffering or distress.

Upon the trial of any woman for an offence against this sub-clause, it shall not in any case be necessary to prove that the child whose death is alleged to have been caused was completely born alive ; but the same shall be presumed to have been so born alive, unless and until the contrary be shown.

- (b) Any woman who, being by reason of physical or mental suffering or distress deprived of the ordinary power of self-control, knowingly and intentionally inflicts bodily harm upon any child to which she has given birth, within fourteen days after its birth, if such child shall die and death shall have resulted from, or have been hastened by, such bodily harm.

No woman shall be convicted of murder by reason of having caused the death of her child under the circumstances in this clause respectively mentioned. PART III.

SUICIDE.

512. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any term not exceeding two years :—
Whoever :

Definition and punishment of acts relating to suicide.

(a) Incites any person to kill himself under such circumstances that, if such person thereby caused the death of another, he would be guilty of murder under the provisions of this Code ;

(b) Aid or abets any person to so kill himself.*

513. Is guilty of an offence, and, upon conviction thereof, liable to be imprisoned without hard labour for any period not exceeding two years :—

Attempts to commit suicide.

Whoever attempts to kill himself under such circumstances that, if he thereby wilfully caused the death of another, he would be guilty of murder under the provisions of this Code.

ATTEMPTS, CONSPIRACIES, AND LETTERS THREATENING TO MURDER.

514. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without

Punishment of attempt to murder.

* By the present law these acts amount to murder (*vide* 1 Hale, P. C. 411-419.)

PART III. hard labour, for any term not exceeding two years:—

Whoever, by any means whatsoever, attempts to murder any person.

Inciting
and con-
spiracy to
murder.

515. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life,* or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years:—

Whoever incites, or endeavours to incite or procure, or conspires with any person, whether such person be in England or not, and be or be not a British subject, to murder any other person or to cause or procure any such person to be murdered, whether or not in either case the person intended to be murdered be or be not a British subject, or be or be not within the dominions of the Sovereign for the time being of these realms.

516. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for ten years, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any term not exceeding two years:—

Accessory
after the
fact to
murder.
Sending
letter
threaten-
ing to
murder.

(a) Whoever becomes an accessory after the fact to murder;

(b) Whoever, *intending to put any person in fear, or for any unlawful purpose whatsoever,*

* The punishment for this heinous offence is at present limited to ten years' penal servitude. Short of actual murder, there can hardly be any offence more grave, or deserving of condign punishment, than a conspiracy to commit murder.

sends, or knowing the contents thereof, PART III.
 delivers, or directly or indirectly causes to
 be conveyed or received, anything what-
 soever written, printed, or otherwise ren-
 dered legible, threatening that any person
 whatever will kill or murder any person.*

517. Is guilty of an offence, and liable, upon con-
 viction thereof, to penal servitude for life, or for any
 lesser term for which penal servitude may be lawfully
 awarded, or to be imprisoned, with or without hard
 labour, for any period not exceeding two years :—

Prevent-
 ing escape
 from
 wreck.

Whoever unlawfully and intentionally prevents
 or impedes any person, being on board of or having
 quitted any ship, vessel, or boat wrecked, stranded,
 or cast on shore, in his endeavour to save his life, or
 unlawfully and intentionally prevents or impedes
 any person who is endeavouring to save the life of
 any other person so situate.

PROCURING ABORTION.

518. Is guilty of an offence, and liable, upon con-
 viction thereof, to penal servitude for twenty years,
 or for any lesser term for which penal servitude

Defini-
 tions and

* This sub-section is taken from 24 & 25 Vict. c. 100, s. 16, which, how-
 ever, contains the word *maliciously* before *sends*, *delivers*, etc. In a note to
 this 16th section, Mr. Greaves complains that the word was “unneces-
 sarily introduced” in committee of the whole House of Commons. The
 intention of the House, doubtless, was to provide that a person should
 not be liable to be convicted of felony and sentenced to the severe punish-
 ment of ten years’ penal servitude, unless the threat were used with a
 serious intention either to carry it out, or to produce fear in the mind of
 the person threatened, or with intent to extort, or with some other sinister
 motive. Assuming this to have been the intention, the insertion of the
 word *maliciously* was not a judicious mode of carrying it into effect.
 I have therefore omitted it, but added in lieu thereof the words which
 appear in italics at the commencement of the sub-section.

PART III. may be lawfully awarded, or to be imprisoned, with
punish-
ment. or without hard labour, for any period not exceeding
 two years :—Whoever :

- (a) Being a woman with child, with intent to procure her own miscarriage, (i.) administers to herself or knowingly takes anything calculated to procure miscarriage; (ii.) uses, or knowingly permits to be used, any instrument or any other means whatsoever intended to procure miscarriage;
- (b) With intent to procure the miscarriage of any woman, whether she be or be not with child, (i.) administers to her, or knowingly causes her to take, anything calculated to procure miscarriage; (ii.) uses any instrument or any other means whatsoever intended to procure miscarriage.

Attempts
to procure
abortion.

519. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for five years, or to be imprisoned, with or without hard labour, for any period not exceeding one year :—Whoever :

- (a) Supplies or procures anything whatsoever intended to procure the miscarriage of any woman, whether she be with child or not, knowing that the same is intended to be used with intent to procure miscarriage;
- (b) Incites or conspires with any person to commit either of the offences in the last preceding clause mentioned.

CONCEALMENT OF BIRTH.

Defini-
tion and

520. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or with-

out hard labour, for any period not exceeding two years :—

PART III.
punish-
ment.

- (a) Whoever, being delivered of a child, whether such child died before, at, or after its birth, disposes of the dead body of such child in any manner with intent to conceal the fact that she was so delivered ;
- (b) Whoever, knowing that any woman has been so delivered as aforesaid, disposes of the dead body of any such child in any manner with intent to conceal the fact that such woman has been so delivered.

Provided that no *fœtus* shall be deemed to be a child within the meaning of this clause which had not, at the time of delivery, reached the period at which it might have been born alive.

RAPE AND KINDRED OFFENCES.

521. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Definition
and
punish-
ment of
rape.

- (a) Whoever has carnal knowledge of any woman, not being his wife, either without her conscious consent or with her consent, if such consent be obtained by the use of any force or threat, or by personating or falsely representing himself to be her husband, or by falsely pretending that such carnal knowledge

PART III.

Carnally knowing any child under the age of twelve.

- is necessary, or will be beneficial to her, for any surgical or medical purpose.*
- (b) Whoever carnally knows any girl who is under the age of twelve years, whether the offender believed her to be above that age or not.

Attempt to commit rape.

522. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :†—

Whoever attempts to commit either of the offences in the last preceding clause mentioned.

Carnally knowing any child between the ages of twelve and thirteen.

523. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever carnally knows any girl who is above the age of twelve years and under the age of

* It seems doubtful, in face of a recent decision, *Reg. v. Flattery*, 46 L. J., M. C. 130, whether a man having carnal intercourse with a woman by personating her husband, or inducing a woman to submit herself to him, believing by means of his fraudulent representations that she is his lawful wife, amounts in either case to the offence of rape. In the case cited, it was held to amount to rape if a man induced a woman to have carnal intercourse with him, by falsely pretending that it was necessary for a medical or surgical purpose. What the law ought to be on this subject admits of little doubt, and by this clause, in each of the cases mentioned, the offender would be guilty of rape.

† This offence, despite its gravity, is not at present punishable with penal servitude; two years' imprisonment with hard labour being the maximum punishment authorized.

thirteen years,* whether the offender believed her to be above that age or not. PART III.

524. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding two years :—
Whoever :

Attempts to carnally know children under thirteen years of age.

(a) Attempts to carnally know any girl who is under the age of thirteen years, whether the offender believed her to be above that age or not ;

(b) Indecently assaults any female who is under the age of thirteen years, although with her consent ;

Indecent assault on females.

(c) Indecently assaults any female above the age of thirteen years, against her consent ; or with her consent, if obtained by any threat or fraud.

525. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser period for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Procuring any female under the age of twenty-one years to have carnal connection.

Whoever, by any false representation or fraudulent means whatever, procures or induces any female under the age of twenty-one years to have carnal connection with any male, whether the offender believed her to be above that age or not.

526. The expression “carnal knowledge” in this Definition

* This offence can only at present be punished with a *maximum* punishment of two years' imprisonment with hard labour (38 & 39 Vict. c. 94, s. 3), a punishment in many cases wholly inadequate.

PART III. Code used means any, the slightest, penetration of the female organ by the male organ of generation. of "carnal knowledge." The expression "carnally knows" means the act of causing such penetration.

Punishment of conspiracy to defile. 527. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, with or without hard labour, for any period not exceeding one year : *—

Whoever conspires with any other person (other than the woman to whom the conspiracy refers) to induce any woman to commit adultery or fornication.

BIGAMY.

Definition and punishment of bigamy. 528. Is guilty of an offence, and liable, upon conviction thereof (if a male, and found by the jury to have gone through the form of marriage hereinafter mentioned, with a woman, to whom he represented, and who in fact believed him, to be unmarried, and which marriage was consummated under such representation and belief) to penal servitude for life, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years; and in any other case to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any term not exceeding two years:†—

Whoever, being bound by a subsisting marriage,

* Hard labour cannot now be ordered in the case of a person convicted of this offence, which is punishable with simple imprisonment.

† The *maximum* punishment to which any person convicted of bigamy can now be sentenced is seven years' penal servitude (24 & 25 Vict. c. 100, s. 57)—a totally inadequate punishment in those cases where, substantially, the offence partakes of all the heinousness of rape.

wherever contracted, recognized by the laws of the United Kingdom, goes through a form of marriage with another person which, if both the contracting persons were unmarried, would constitute a valid marriage. PART III.

Provided that no person shall be convicted of an offence against this clause, if he or she reasonably proves that his or her wife or husband, at the time of going through such form of marriage, has been continuously absent from such person for the space of seven years then last part, and that he or she was reasonably ignorant whether or not his or her wife or husband were alive or not during the said period; or that he or she believed, honestly and upon reasonable ground, that his or her wife or husband, although not so absent, was in fact dead at the time of going through such form of marriage as aforesaid.* Proviso.

* It seems to be doubtful whether a person, contracting a second marriage under an honest but, as it afterwards turns out, erroneous belief, founded upon reasonable grounds, that his or her first wife or husband is dead, such wife or husband not having been continuously absent for seven years, commits bigamy.

Two distinct judges, in different cases recently tried, decided the proposition in the negative (*vide* Reg. v. Turner, 9 C. C. C., 145, *per* Baron Martin; and Reg. v. Horton, 11 C. C. C., 670, *per* Baron Cleasby). Even more recently another learned judge ruled the exact converse, and even refused to grant a case for the consideration of the point at the Court of Criminal Appeal (12 C. C. C., 237, *per* Mr. (now Lord) Justice Brett, after consultation with Mr. Justice Willes).

There is no virtue, in itself, in a hard and fast line of seven years' absence, which was only fixed by the legislature as a reasonable period after which it might be justifiable to conclude that a husband or wife, so long absent, and of whom no tidings can be obtained, is dead. But if other circumstances of equal, or even greater, cogency lead to the fair conclusion in the mind of a person that he or she is no longer bound by any subsisting marriage (as, *e.g.*, a wife receiving information from an unimpeachable source, to which any intelligent person would unhesi-

PART III.

Know-
ingly
going
through
form of
marriage
with any
person
who is
bound by
a sub-
sisting
marriage.

529. Is guilty of an offence, and liable to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to imprisonment, with or without hard labour, for any period not exceeding two years :—

Whoever, being unmarried, goes through such form of marriage as is in the last clause enacted an offence, knowing that the other party thereto is bound by such a subsisting marriage as is therein mentioned.

ABDUCTION OF FEMALES.

Taking
away or
detaining
a female
against
her will.

530. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser period for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, with intent to marry or carnally know any woman, or to cause any woman to be married or carnally known, takes away or detains any female of any age against her will.

Taking an
unmarried
girl, under

531. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for any term not

tatingly give credence, that her husband, who was known to be absent in a foreign country, has died there, but which information afterwards turns out to be due to a mistake of identity or some other circumstance), surely that person should not be deemed to commit a crime because he in good faith acts upon them.

This is not a question of legalizing the subsequent marriage, but solely as to whether or not an inference derived from continuous absence for seven years, which the legislature has declared a sufficient, shall be the only ground of excuse. I submit that no valid reason can be urged against the latter part of this clause which does not also apply to the seven years' rule.

exceeding seven years,* or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever takes or causes to be taken an unmarried girl, under the age of sixteen years (although with her consent, and whether or not the offender believed her to be above that age), out of the possession of her father or mother, or any person who has the lawful care or charge of her, without the consent of her father or mother or such other person, or with his or her consent obtained by fraud.

532. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, with intent to marry or carnally know any woman, or to cause any woman to be married or carnally known by any other person, takes away or detains any female being unmarried and above the age of sixteen years, but under the age of twenty-one years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her.†

533. If any person so taken away or detained as in the last three preceding clauses mentioned has any

PART III.
sixteen,
out of the
possession
of her
parents
or other
lawful
charge.

Taking an
unmarried
woman,
between
the age of
sixteen
and
twenty-
one years,
out of the
possession
of her
parents
or other
lawful
charge.

Provision
as to
property

* At present the punishment for this offence is limited to a maximum of two years' imprisonment, with or without hard labour. This is in striking contrast to the severity which the law authorizes in the case of offences against property, of a far less serious character.

† At present it is not an offence to abduct a female who is between the ages of sixteen and twenty-one, *unless* she have some present or future property. A girl of seventeen may be taken away from, and against the will of, her parents with impunity, if she be penniless. If she be an heiress, the wrong may be avenged by a sentence of fourteen years' penal servitude. This is an instance, with which our criminal law abounds, of the contrast between the protection afforded to person and property, to rich and poor.

PART III. interest, legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate; or is a presumptive heiress, or co-heiress, or presumptive next of kin, or one of the presumptive next of kin, to any one having such interest; any person convicted of any such offence as in the three last preceding clauses mentioned shall be incapable of taking any estate or interest, legal or equitable, in any real or personal property of such woman, or in which she has any interest, or which comes to her as such heiress, co-heiress, or next of kin; and if any such marriage takes place, such property shall, upon conviction, be settled in such manner as the High Court of Criminal Justice may, upon any application at the instance of the Attorney-General, or upon the application of the next of kin of such woman, appoint. If such property is situated in any part of Her Majesty's dominions, other than Great Britain and Ireland, such settlement shall be made under the direction of such Court as corresponds either to the High Court of Justice or the High Court of Criminal Justice, and upon the information of such officer as corresponds there to that of Attorney-General, or upon the application of the next of kin of the said woman.

UNNATURAL OFFENCES.

Definitions and punishment of.

534. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser period for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years:—Whoever:

(a) Carnally penetrates, or permits himself or

herself to be carnally penetrated by, any living creature other than a human being; PART III.

- (b) Being a male, carnally penetrates, or permits himself to be carnally penetrated by, any male person.

535. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser period for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :— Attempts to commit.

Whoever attempts to commit either of the unlawful acts mentioned in the last preceding clause, or by any act endeavours to incite any person to commit the same.

536. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any term not exceeding two years :—Whoever, being a male : Assaults with intent to commit.

- (a) Commits any assault upon any male person, with intent to commit any unnatural practice ;

- (b) Touches any male person, or permits himself to be touched by any male person, with intent to excite or gratify any unnatural lust, either in himself or some other person.

BODILY HARM.

537. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years, or for any lesser period for which penal servitude Causing grievous bodily harm.

PART III. may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever intentionally, by any unlawful means whatsoever, causes to any person grievous bodily harm,* with intent :

- (a) To maim, disfigure, or disable such person ;
- (b) To facilitate the escape from lawful custody of himself or any other person.

Attempts
to cause
grievous
bodily
harm.

538. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser period for which penal servitude may be lawfully awarded, or to imprisonment, with or without hard labour, for any period not exceeding two years, and if a male under the age of sixteen years, to be once whipped :—

Whoever, with either of the intents in the last preceding clause mentioned :

- (a) Wounds or, by any unlawful means whatsoever, causes actual bodily harm ;
- (b) Attempts, by any means whatever, to cause grievous bodily harm to any person.†

* At present this offence is punishable with penal servitude for life—the same sentence, in fact, as is authorized in the case of the like act committed with the more serious intent, viz. to murder. Other offences of equal gravity, in some instances actually endangering life, or permanently injuring health, can only at present be visited with a *maximum* punishment of five or ten years' penal servitude.

† Under the present law, certain attempts to cause grievous bodily harm are punishable with penal servitude for life, whilst others, not inferior in gravity, are punishable much less severely (*vide* 24 & 25 Vict. c. 100). Thus, by s. 18, any one attempting to shoot at any person with intent to do him grievous bodily harm, is liable to be sentenced to penal servitude for life, although no injury may be in fact done ; whilst, by s. 23 of the same statute, maliciously administering poison, so as to endanger the life of any person, is punishable with a *maximum* sentence of ten years' penal servitude.

PART III.

OFFENCES COMMITTED, OR ATTEMPTED TO BE COMMITTED, WITH VIOLENCE TO THE PERSON.

539. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years, or for any lesser term for which penal servitude may be lawfully awarded, or to imprisonment, with or without hard labour, for any term not exceeding two years; and, according to his age (if a male), to be flogged or whipped :—

Definition and punishment of offences with violence.

Whoever, with intent to commit, or to enable or assist or facilitate the commission, by himself or any other person, of, any offence against this Code, or to resist or prevent the lawful apprehension of himself or any other person :

- (a) Applies or administers to, or causes to be administered to or taken by, any person, or causes any person to be affected by, any chloroform, laudanum, or any stupefying or overpowering drug or thing, or attempts to do or cause to be done either of the said acts ;
- (b) Attempts to choke, suffocate, or strangle any person ;
- (c) Attempts to render any person insensible, unconscious, or incapable of resistance, by any violent means whatever.
- (d) Causes, by any unlawful means whatsoever, grievous bodily harm to any person.

Administering chloroform, etc.

Attempting to choke or render insensible.

540. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years,

Administering poison so

PART III. or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

as to endanger life or inflict grievous bodily harm.

Whoever intentionally administers, or causes to be administered to or taken by any other person, any poison, or other noxious or destructive thing, so as thereby to endanger the life of such person, or to inflict upon him grievous bodily harm.

Causing actual bodily harm.

541. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for five years, or to be imprisoned, with or without hard labour, for any period not exceeding one year :—Whoever intentionally :

(a) Causes actual bodily harm to any person ;

Administering poison with intent to injure or annoy.

(b) Administers, or causes to be administered to or taken by any other person, any poison, or other destructive or noxious thing, with intent to injure, aggrieve, or annoy such person, whether or not any injury is in fact caused thereby.

Endangering the safety of railway passengers.

542. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under the age of sixteen years, to be whipped :—

Whoever does any act whatever, or wilfully omits any act which it is his duty to do, in either case with the express intent and reasonably calculated to cause grievous bodily harm to, or directly or indi-

rectly endanger the safety of, any person travelling or being on any railway.* PART III.

543. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding two years :—Whoever :

- (a) Does or omits any act in the last preceding clause mentioned in such a manner as to be calculated, although not done with intent, to injure or endanger the safety of any person travelling or being on any railway ; Wantonly endangering the safety of railway passengers.
- (b) Having the charge of any carriage or vehicle, whether public or private, by wanton or furious driving or racing, or other wilful misconduct, or wilful neglect, does or causes to be done any bodily harm to any person whatever. Causing bodily harm by furious driving, etc.

544. Is guilty of an offence and liable, upon conviction thereof, to penal servitude for life, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under the age of sixteen years, to be whipped : Injuring or attempting to injure persons by explosive or corrosive substances.

Whoever, with intent to burn, maim, disfigure, disable, or do any grievous bodily harm to any person, whether any bodily injury be in fact effected or not :

- (a) Sends, or delivers or causes to be taken

* This clause is submitted as embracing everything comprised by 24 & 25 Vict. c. 100, s. 32, with the advantage of expressing in general terms the offences contemplated by that section.

PART III.

or received by any person, any explosive substance ;

- (b) Puts or lays at any place, or casts or throws at or upon, or otherwise applies to, any person, any corrosive fluid or any destructive substance ;
- (c) Causes gunpowder or any other explosive substance to explode.

Placing
explosive
substance
near build-
ing, etc.,
with
intent to
injure.

545. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under nineteen years of age, to be whipped :—

Whoever, with intent to cause injury or damage to any person, unlawfully places or throws any explosive substance in, into, upon, against, near, or under any building, structure, erection, ship, vessel, or place whatsoever.

SETTING MAN-TRAPS.

Definition
and pun-
ishment.

546. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for five years, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, with intent to kill or inflict any bodily harm upon any person who may happen to come into contact therewith :

- (a) Sets any spring gun, man-trap, or other dangerous engine ;
- (b) Knowing that any such gun, trap, or engine has been set by any other person in any

place which then is or afterwards comes PART III.
 into his possession, permits the same to
 continue.

Provided that this clause shall not extend to any Proviso.
 gin or trap usually set with intent to destroy vermin,
 or to any spring gun, man-trap, or engine set from
 sunset until sunrise in a dwelling-house for the pro-
 tection thereof.

SELF-MAIMING.

547. Is guilty of an offence, and liable, upon con-
 viction thereof, to be imprisoned, with or without
 hard labour, for any period not exceeding two
 years :—

Maiming
one's self,
or another
with his
consent.

Whoever, for any purpose whatsoever which is
 injurious to the public at large, maims himself, or
 maims any other person with his consent.

ACTS AND OMISSIONS ENDANGERING LIFE, HEALTH, OR PROPERTY.

548. Is guilty of an offence, and liable, upon con-
 viction thereof, to penal servitude for seven years,*
 or for any lesser period for which penal servitude
 may be lawfully awarded, or to be imprisoned, with
 or without hard labour, for any period not exceeding
 two years :—

(a) Whoever, being legally bound and able to
 provide food, lodging, clothing, bedding,
 medical aid, medicine, or any other neces-
 sary for any person whatever who is
 under his charge, and who is from any

Wilful
omission
to provide
neces-
saries by a
person
legally
bound to
provide
the same.

* The *maximum* punishment at present is five years' penal servitude.

PART III.

Exposing
and en-

cause unable to withdraw himself therefrom and to provide the same for himself, intentionally and without just excuse refuses or neglects to provide the same, whereby the life of such person is endangered, or his health is or is likely to be seriously injured.*

(b) Whoever, being under any legal obligation

* This sub-clause proposes a more just measure of severity than is authorized by the existing law in the case of this class of offence. By 24 & 25 Vict. c. 100, s. 26, any master or mistress convicted of having, wilfully and without lawful excuse, refused or neglected to provide necessary food, clothing, or lodging for, or of doing or causing to be done any bodily harm to, any apprentice or servant, so that the life of such apprentice or servant has become endangered, or his health has been or is likely to be *permanently* injured, may be sentenced to penal servitude for any term not exceeding three years (increased by implication to five years by 27 & 28 Vict. c. 47, s. 2). The section, as originally framed by its author, was so drawn as to include every person "legally liable, as a husband, parent, guardian, committee, master, mistress, nurse, or otherwise, to provide for any person, as a wife, child, ward, lunatic, idiot, apprentice, servant, infant, or otherwise, necessary food," etc., "so as to afford a much-needed protection for children and lunatics, who are ill-treated and deprived of their proper sustenance by those whose duty it is to protect and maintain them." All the words, however, were struck out by the Select Committee of the House of Commons, except those limiting the clause to a master or mistress in relation to an apprentice or servant. More recently, by 31 & 32 Vict. c. 122, s. 37, a parent wilfully neglecting to provide adequate food and other necessities for his child, being in his custody and under the age of fourteen years, whereby the health of such child is or is likely to be *seriously* injured, is liable to be convicted summarily, and to be sentenced to a *maximum* of six months' imprisonment with hard labour. Wilful omission, on the part of a parent or person standing *in loco parentis*, to provide necessities for a child of tender years, unable to provide for itself, so as to injure the health of the child, is a misdemeanour at common law. It will thus be seen that the protection afforded by the law in this respect to those who are the most helpless is very scanty. Indeed, there is no more painful and characteristic feature in our criminal law, than the striking contrast between the stern, vindictive, and often cruel punishments enacted in the case of any offence against property, and the too frequent cynical disregard of injuries against the person, especially of those in the humbler ranks of life.

to take charge of any child under the age of two years, unlawfully abandons, exposes to risk, or knowingly leaves exposed to risk any such child, whereby the life of such child is endangered, or his health is or is likely to be seriously injured. PART III.
dangering
the life or
health of
an infant.

- (c) Whoever endangers the life or seriously injures the health of any person, either by the intentional commission of any act, or by the intentional omission to discharge any duty (i.) which is imposed by law ; (ii.) which the person making such omission has taken on himself the duty of performing, by virtue of any contract, either written or verbal ; (iii.) which such person has taken upon himself the duty of performing, by reason of some wrongful act on his part. Endanger-
ing the
life or
health of
any person
by certain
acts or
omissions.
- (d) Whoever endangers the life or seriously injures the health of any person, by any omission, in the performance of any such duty as is in the last preceding sub-clause hereinbefore mentioned, to use an ordinarily reasonable amount of knowledge, skill, caution, or attention, where such duty consists in administering surgical or medical treatment, or in the performance of any other lawful act which is, or is likely to be, attended with danger, which

* The word used in s. 27 of 24 & 25 Vict. c. 100, is *permanently*. Otherwise this sub-clause is, I believe, framed in strict accordance with the section and the construction given to the section by the Court for the Consideration of Crown Cases Reserved.

PART III.

any person has undertaken respectively to administer or perform.

Causing
injury to
property.

549. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, by either of the like means as in the last preceding clause mentioned, causes injury to any valuable property belonging to any person.

CHALLENGES AND FIGHTING.

Challeng-
ing or pro-
voking a
person to
fight.

550. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment for any period not exceeding one year :—

Whoever, by any means whatever, challenges, or endeavours to incite or provoke, any person to fight a duel ; or knowingly conveys, or directly or indirectly causes to be conveyed to or received by any person, any such challenge.

Unlawful
fighting.

551. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever fights with any person, intending to kill or to inflict grievous bodily harm upon such person.

ASSAULTS.

Definition
and
punish-

552. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, either with or

without hard labour, for any period not exceeding six months : *—

PART III.
ment of
assault.

Whoever intentionally, and without lawful justification or excuse :

- (a) Uses, or causes to be used, or attempts to use, any force to the person of another, or to the clothes which such person is wearing, without his consent or with his consent, if such consent has been obtained by any threat or fraud ;
- (b) Uses any gesture to another from which it may reasonably be believed that the person using such gesture intends to use any force to such other person, without his consent or with his consent, if such consent has been obtained by any threat or fraud.

553. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding one year :—

Punish-
ment of
assault
with
intent to
commit
certain
offences.

Whoever commits any assault, with intent :

- (a) To commit any offence against this Code for which any other punishment is not specifically provided by this Code ;
- (b) To resist or prevent the lawful apprehension or detainer of himself or any other person, or to rescue any person from lawful custody ;

* The maximum punishment at present authorized is one year's imprisonment, with or without hard labour. This is a severe punishment for a *common* assault, *i.e.* an assault which does not occasion actual bodily harm, and is free from any of those circumstances of aggravation for which special punishment is provided.

PART III.

(c) Assaults, resists, or wilfully obstructs any officer of the peace in the due execution of his duty, or any person lawfully acting in aid of such officer of the peace.

Proviso as
to punish-
ment in
certain
cases.

Provided that no person shall be liable to any greater punishment for any assault committed with intent to commit any offence, than he would be liable to if he had been convicted of having committed the offence itself, unless the assault be of an aggravated nature. And no person, convicted of any assault (other than an aggravated one) with either of the intents mentioned in sub-section (b) of this clause, shall be liable to any greater punishment than he would be liable to if he had been convicted of the offence which has given rise to the apprehension or detainer therein mentioned.

ASSAULTS WITH INTENT TO ENDANGER HEALTH, OR
THE SAFETY OF ANY PERSON OR PROPERTY; OR
TO OBSTRUCT CRIMINAL JUSTICE.*

Definition
and
punish-
ment of.

554. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, with or without hard labour, for any period not exceeding two years :—

Whoever assaults or threatens violence to any person whatsoever who is performing, or about or upon his way to perform, any lawful act or duty having reference to :

* Some of these acts are expressly provided for by statute. Such as are not the subject of statutory enactment would presumably be punishable as misdemeanours at common law. That they ought to be punishable as criminal offences few, I imagine, will be found to question.

- (a) The preservation or administering to the health or safety of any person ;
- (b) The safety or preservation from injury or otherwise of any valuable property ;
- (c) The administration of criminal justice under the provisions of this Code ;

With the express intention, in either case, unlawfully to obstruct or hinder any such person in the performance of any such act or duty.

ASSAULTS UPON MINISTERS OF RELIGION.

555. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment for any period not exceeding one year, with or without hard labour : *—

Definition
and
punish-
ment of.

Whoever, (a) by force, fraud, or threat, obstructs or prevents, or endeavours to obstruct or prevent, any clergyman or other minister in or from lawfully celebrating divine service or otherwise officiating in any church, chapel, meeting-house, or other place of religious worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial-place ;

(b) Strikes or offers any violence to, or in any manner, by force, fraud, or threat, obstructs or endeavours to obstruct, any clergyman or other minister engaged in, or (to the knowledge of the offender)

* The punishment by the present law is imprisonment, with or without hard labour, for any term not exceeding two years (24 & 25 Vict. c. 100, s. 36).

PART III.

about to engage in, any of the rites or duties in the last preceding sub-clause mentioned, or (to the knowledge of the offender) going to perform the same, or returning from the performance thereof.

PREVENTING THE BURIAL OF, AND DISINTERRING,
CORPSES, AND OFFENCES IN RELATION TO
INQUESTS.

Definition
and
punish-
ment.

556. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment for any period not exceeding one year, with or without hard labour:—Whoever :

- (a) Unlawfully prevents the burial of any corpse ;
- (b) Without lawful authority, and from whatever motive, disinters a corpse ;
- (c) Buries or otherwise disposes of any corpse, knowing that an inquest ought to be held, without giving notice to a coroner ;
- (d) Being under a legal duty to do so, fails to give notice to a coroner that a body, on which an inquest ought to be held, is lying unburied, before such body has putrefied.

PUBLIC INDECENCY.

Definition
and
punish-
ment of.

557. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding one year :—

Whoever wilfully does any grossly indecent act in

any open place to which the public generally have the right or privilege of access; or which is so situate that what passes there can be seen by any number of persons, if they happen to look.

PART III.

OBSCENE PUBLICATIONS.

558. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding one year :—

Definition
and
punish-
ment of.

Whoever knowingly :

- (a) Publicly sells or exposes for public sale, or to public view, any obscene book, paper, print, picture, drawing, model, or other representation ;
- (b) Publicly exhibits any disgusting or indecent object ;
- (c) Knowing the contents thereof, exhibits, or causes to be exhibited, made, seen, or received by any person whatsoever, any obscene matter, printed, written, or otherwise rendered visible ;
- (d) Obtains or procures any obscene book, paper, print, picture, drawing, model, or other representation, or any disgusting or indecent object, with intent to sell or expose for sale ;

Unless such publication or exhibition was for the public good. Whether it was so or not is a question of fact depending upon the circumstances of the particular case ; and in determining whether any such publication or exhibition was or was not for the

PART III. public good, regard shall be had to the mode of publication or exhibition, to the extent thereof, and generally to all the surrounding circumstances of the case.

PUBLIC INSULTS TO RELIGION.*

Definition and punishment of. 559. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, with or without hard labour, for any period not exceeding one year :—Whoever :

- (a) Does any act in public ;
- (b) Knowing the contents and meaning thereof, exhibits, or causes to be exhibited or received by any person, any words, matter, writing, or sign marked or otherwise denoted upon any substance, or in any way rendered visible ;

In either case expressly intending thereby and reasonably calculated to insult or to bring into hatred, ridicule, or contempt the religion or religious opinion professed by any body of persons. Provided that no one shall be deemed to offend against the provisions of this clause by reason only of expressing in good faith, or attempting to establish by argument or controversy, any opinion whatsoever of or concerning any religion.

* This clause is intended to replace the present almost obsolete law on the subject of blasphemy ; and to provide, in lieu thereof, against any public insult to any religion, expressed, not for the legitimate purpose of argument or controversy, but for the sake of gratuitous insult and contumely or abuse.

FORCIBLE ENTRY AND DETAINER OF LAND OR HOUSES.

PART III.

560. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment as a misdemeanant for any period not exceeding one year :—

Definition
and
punish-
ment of.

- (a) Whoever, by actual violence, or by threat of violence, either to person or property, or in any other manner calculated to create a breach of the public peace, enters or takes, or endeavours to enter or take, possession of any land or tenement in the actual possession of some other person, whether or not the person doing or causing to be done either of such acts have, or claims to have, or have not, a legal right to enter or take possession thereof.

Provided that no person who so enters upon any land or tenement of his own, and which is in the custody of his servant or bailiff, shall be deemed to commit an offence within the meaning of this sub-clause.

- (b) Whoever, being in possession of any land or tenement, without legal justification or excuse, detains from any person lawfully entitled thereto such land or tenement by any or either of the means which are declared to be unlawful, in the case of an entry therein, by the last preceding sub-clause.

ARSON.

561. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years,

Definition

PART III. or for any lesser term for which penal servitude may
 and be lawfully awarded, or to be imprisoned, with or
 punish- without hard labour, for any period not exceeding
 ment of. two years, and if a male under sixteen years of age,
 to be whipped :—

Whoever, with intent unlawfully to injure or
 prejudice any person whatsoever, wilfully sets fire :

- (a) To any building or other erection or structure whatever, whether finished or unfinished ; or to any goods, matter, or thing in, against, or under any such building, erection, or structure, with intent to set fire to such building, erection, or structure ;
- (b) To any crop of cultivated vegetable produce ;
- (c) To any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern ;
- (d) To any stack of cultivated vegetable produce, or of wood, bark, heath, gorse, furze, or fern, or of any vegetable fuel ;
- (e) To any mine, or to any stack of mineral fuel ;
- (f) To any ship, vessel, boat, or barge, whether the same be complete or in an unfinished state, or to any tackle, apparel, or furniture thereof, or to any goods in any ship, vessel, boat, or barge ;
- (g) To any of Her Majesty's military, naval, or victualling stores, or other ammunition of war ; or any timber or materials for building, repairing, or fitting out ships or vessels.

562. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under sixteen years of age, to be once whipped :—

PART III.
Attempts
to commit
arson.

Whoever, with intent unlawfully to injure or prejudice any person whatsoever, wilfully attempts to set or cause to be set fire to anything mentioned in any of the sub-sections of the last preceding clause.

MALICIOUS INJURIES TO PROPERTY BY GUNPOWDER.

563. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under the age of sixteen years, to be whipped :—

Blowing
up build-
ings, etc.,
by gun-
powder
or other
explosive
substance.

Whoever, with intent unlawfully to injure or prejudice any person whatsoever, wilfully, by the explosion of gunpowder or other explosive substance, destroys, throws down, or damages the whole or any part of any building or other erection or structure, or any ship or vessel, whether the same be complete or in an unfinished state.

564. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding

Attempts
to blow up
buildings,
etc.

PART III. two years, and if a male under the age of sixteen years, to be once whipped :—

Whoever, with intent to destroy or damage any building or other erection or structure, or any ship or vessel, or any engine, machinery, working tools, fixtures, goods, or other property, in order unlawfully to injure or prejudice any person whatsoever, places or throws in, into, upon, under, against, or near any building or other erection or structure, or any ship or vessel, whether the same be complete or in an unfinished state, any gunpowder or other explosive substance, whether or not any explosion takes place, and whether or not any damage be caused thereby.

Manufacturing or knowingly having any gunpowder, etc., with unlawful intent.

565. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude* may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever makes or manufactures, or knowingly has in his possession, any gunpowder or other explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing, with intent thereby, or by means thereby, and reasonably calculated, to commit, or for the purpose of enabling any person whatever to commit, any unlawful injury to person or property which is punishable under any of the provisions of this Code, upon a first conviction, with death or penal servitude.†

* The punishment for this offence at present is imprisonment, with or without hard labour, for any term not exceeding two years (24 & 25 Vict. c. 97, s. 54, and 24 & 25 Vict. c. 100, s. 64).

† The words in the section from which this clause is taken are, "Any of the felonies in this Act mentioned" (*ibid.*).

566. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

PART III.

Letters threatening to burn or destroy.

Whoever sends, delivers, or directly or indirectly causes to be received, knowing the contents thereof, any letter or document, written, printed, or otherwise rendered legible, threatening unlawfully to set fire to or destroy any building, erection, ship or vessel, or any crop or stack of vegetable produce, or to kill, wound, or maim any cattle.

MALICIOUS INJURIES TO SHIPS.

567. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Scuttling ships.

Whoever, with intent unlawfully to injure or prejudice any person whatsoever, wilfully casts away or in any wise destroys any ship or vessel, whether complete or in an unfinished state.

568. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Attempts to scuttle ships.

Whoever, with intent unlawfully to injure or pre-

PART III. judice any person whatsoever, wilfully attempts to cast away or in any wise destroy any ship or vessel, whether the same be complete or in an unfinished state.

Exhibit-
ing false
signals,
etc.

569. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any term not exceeding two years, and if a male under the age of sixteen years, to be whipped :—Whoever :

(a) With intent to bring any ship or vessel into danger, masks, alters, or removes any light or signal ; or exhibits any false light or signal ;

(b) Wilfully does any act tending to the immediate loss or destruction of any ship or vessel in distress, with intent to injure or prejudice any person whatsoever.

Destroy-
ing part of
a ship in
distress or
stranded.

570. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, with intent unlawfully to injure or prejudice any person whatsoever, wilfully destroys any part of any ship or vessel in distress, wrecked, stranded, or cast on shore ; or any goods, merchandise, or articles of any kind belonging to such ship or vessel.

571. Is guilty of an offence, and liable, upon con-

viction thereof, to penal servitude for seven years, or PART III.
 for any lesser term for which penal servitude may be
 lawfully awarded, or to be imprisoned, with or with-
 out hard labour, for any period not exceeding two
 years, and if a male under sixteen years of age, to be
 once whipped :—

Whoever wilfully, with intent unlawfully to
 injure or prejudice any person whatsoever :

(a) Damages, otherwise than by fire, gunpowder, Damaging ships by other means.
 or other explosive substance, any ship or
 vessel, whether in a complete or unfinished
 state, with a view either to destroy or
 render the same useless ;

(b) Cuts away, casts adrift, removes, alters, Injuring, concealing, or destroying buoys, etc.
 defaces, sinks, or destroys, or in any other
 manner injures or conceals, any light-ship,
 boat, buoy, buoy-rope, perch, or mark used
 or intended for the guidance of seamen or
 the purpose of navigation ; or does any
 act with intent to destroy either of the
 said things.

MALICIOUS INJURIES TO LIGHTHOUSES, SEA AND RIVER BANKS, BRIDGES, ETC.*

572. Is guilty of an offence, and liable, upon con-
 viction thereof, to penal servitude for twenty years,

* The offences comprised in the sub-clauses (a), (b), (c), (d) of clause 566 are at present punishable with penal servitude for life ; those comprised in the several sub-clauses of clause 567 with a *maximum* of seven years' penal servitude (24 & 25 Vict. c. 97, ss. 30, 33 ; and as to acts done with intent to destroy salmon in salmon rivers, 36 & 37 Vict. c. 71, s. 13). The wide difference in these punishments scarcely appears quite logical. It is also questionable whether seven years' penal servitude is not an altogether disproportionate sentence to the offence of injuring a private fish-pond.

PART III. or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under sixteen years of age, to be whipped :—

Whoever wilfully, with intent thereby unlawfully to injure or prejudice any person whatsoever :

Destroy-
ing light-
houses.

(a) Destroys, either wholly or in part, any lighthouse ;

Destroy-
ing sea-
banks, or
the bank,
dam, or
wall of
any water.

(b) Breaks or cuts down, or otherwise damages or destroys, any sea-bank or sea-wall, or the bank, dam, or wall of or belonging to any river, canal, drain, reservoir, pool, or marsh, whereby any land or building is, or is in danger of being, overflowed or damaged ;

Destroy-
ing quays,
locks, etc.

(c) Throws, breaks, or cuts down, levels, undermines, or otherwise destroys any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, watercourse, or any work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal ;

Destroy-
ing
bridges,
etc.

(d) Pulls or throws down, or in any wise destroys, any bridge (whether over any stream of water or otherwise howsoever), or any viaduct or aqueduct, over or under which any highway, railway, or canal passes ;

Unlawful
acts
rendering
bridges,
etc.,
dangerous
or impass-
able.

(e) Does any injury with intent and reasonably calculated to render any such bridge, viaduct, or aqueduct, or any highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable.

573. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under sixteen years, to be once whipped :—

Whoever wilfully, with intent thereby unlawfully to injure or prejudice any person whatsoever :

Removing
piles, etc.

- (a) Cuts off, draws up, or removes any piles, chalks, or other materials fixed in the ground and used for securing any sea-bank or sea-wall, or the bank, dam, or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock ;
- (b) Opens or draws up any floodgate or sluice, or does any injury or mischief to any navigable river or canal, with intent and reasonably calculated to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof ;
- (c) Cuts through, breaks down, or otherwise destroys the dam, floodgate, or sluice of any salmon river, fish-pond, or of any water which is private property, or in which there is any right of private fishery, with intent thereby unlawfully to take or destroy any of the fish in such river, pond, or water, or reasonably calculated unlawfully to cause the loss or destruction of any of the fish therein ;
- (d) Puts any lime or any noxious material in

Otherwise
injuring
and ob-
structing
the busi-
ness of
any navi-
gable river
or canal.

Injuries
to salmon
rivers, fish-
ponds, etc.

PART III.

Injuries
to mill-
ponds, etc.

any such river, pond, or water, with intent thereby unlawfully to destroy any of the fish that may be there, or that may be thereafter put therein ;

- (e) Cuts through, breaks down, or otherwise destroys the dam or floodgate of any mill-pond, reservoir, or pool.

MALICIOUS INJURIES TO RAILWAYS AND TELEGRAPHS.

574. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under the age of sixteen years, to be whipped :—

Injuries
to railway
trains.

Whoever wilfully, with intent thereby to upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using any railway :

- (a) Puts, places, casts, or throws upon or across any such railway any wood, stone, matter, or thing ;
- (b) Takes up, removes, or displaces any rail, sleeper, or other matter or thing belonging to any railway ;
- (c) Turns, moves, or diverts any points, or other machinery belonging to any railway ;
- (d) Makes or shows, hides or removes, any signal or light upon or near to any railway ; or exhibits any false light or signal ;
- (e) Does or causes to be done any other matter or thing with the express intent and

reasonably calculated to produce either of PART III.
the aforesaid results.*

575. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under the age of sixteen years, to be once whipped :—

Whoever wilfully cuts, breaks, throws down, destroys, injures, or removes any battery, machinery, wire, cable, post, or other matter or thing whatsoever, being part of, or used or employed in or about, or in the working of, any magnetic or electric telegraph.† Injuries to telegraphs.

MALICIOUS INJURIES TO MINES.

576. Is guilty of an offence, and liable, upon con- Definitions

* By s. 36 of 24 & 25 Vict. c. 97, it is a misdemeanour, punishable with two years' imprisonment as a *maximum* punishment, "by any unlawful act, or by any wilful omission or neglect, to obstruct or cause to be obstructed any engine or carriage using any railway." The language of the section is extremely vague and unsatisfactory. The offence contemplated should be punishable upon summary conviction. It is somewhat singular to observe that s. 35 of the same statute contains the word "obstruct" before "upset, overthrow," etc. So that, in two succeeding sections of a statute, the *same act* is punishable under one section with penal servitude for life, and under the other with two years' imprisonment only.

† There is at present no power to award penal servitude for this offence, which is punishable with a maximum of two years' imprisonment (24 & 25 Vict. c. 97, s. 37). By the same section, a similar punishment may be inflicted upon any person who unlawfully "prevents or obstructs, in any manner whatsoever, the sending, conveyance, or delivery" of any telegraphic communication. This offence, however, may be dealt with summarily before a justice of the peace, who is authorized to award imprisonment, with or without hard labour, for any term not exceeding three months, or to inflict a fine not exceeding ten pounds in amount. The offence ought to be punishable upon summary conviction only.

PART III. viction thereof, to penal servitude for twenty years, or
and pun- for any lesser term for which penal servitude may be
ishment. lawfully awarded, or to be imprisoned, with or without
hard labour, for any period not exceeding two years,
and if a male under the age of sixteen years, to be
whipped :—Whoever wilfully :

- (a) Causes any water to be conveyed or flow into any mine, or into any subterraneous passage communicating therewith, with a view unlawfully to destroy or damage such mine, or unlawfully to hinder or delay the working thereof ;
- (b) Pulls down, fills up, obstructs, or damages with intent to destroy, obstruct, or render useless any air-way, water-way, drain, pit, level, or shaft of or belonging to any mine, with a view unlawfully to destroy or damage such mine, or unlawfully to hinder or delay the working thereof ;
- (c) Pulls down or destroys, or damages with intent to destroy or render useless, any engine used in connection with the working or business of any mine, or any appliance or apparatus used in connection therewith, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk, whether the same be completed or in an unfinished state, used or intended to be used in conveying mineral from any mine ; or unlawfully stops, obstructs, or hinders the working of any such engine, appliance, or apparatus, with a view to destroy or

damage such mine, or to hinder or delay PART III.
the working thereof;

- (d) Cuts through, severs, breaks, or unfastens, or damages with intent to destroy or render useless, any rope, chain, or tackle, of whatsoever material the same is made, used in any mine, or in or upon any way or work belonging to, connected with, or employed in, or in the working or business of, any mine.

MALICIOUS INJURIES TO MACHINERY AND GOODS IN PROCESS OF MANUFACTURE.

577. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any term not exceeding two years, and if a male under the age of sixteen years, to be once whipped:—

**Definitions
and pun-
ishment.**

- (i.) Whoever, with intent unlawfully to injure or prejudice any person whatsoever, wilfully cuts, breaks, destroys, or damages, with the intention to destroy or render useless, (a) any machine or engine, whether fixed or movable, used or intended to be used for or in relation to any agricultural operation; (b) any machine or engine, tool or implement, whether fixed or movable, employed or intended to be employed in or in relation to any manufacture whatsoever; (c) any goods what-

PART III.

Entering
house, etc.,
by force,
with in-
tent to
commit
above
offences.

soever, in any stage of manufacture or preparation for manufacture.

- (ii.) Whoever enters by force any house, shop, building, or place, with intent to commit either of the offences in the last preceding sub-clause mentioned.

MALICIOUS INJURIES TO PROPERTY IN PLACES OF PUBLIC RESORT.

578. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding one year, and if a male under the age of sixteen years, to be once whipped : *—

Whoever unlawfully and wilfully destroys or damages :

Damaging
works of
art, etc., in
public
museums
and gal-
leries.

- (a) Any book, manuscript, picture, print, statue, bust, or vase, or any other work of art, or article or thing kept for the purpose of art, science, or literature, or as an object of curiosity, in any museum, gallery, cabinet, library, or repository, which is either at all times or from time to time open for the admission of the public, or of any considerable number of persons, to view the same, either by the permission of the proprietor, or by the payment of money as a condition of entering ;

The
like in

- (b) Any picture, statue, monument, or any memorial of the dead, painted glass, or

* The punishment for this offence is at present limited to six months' imprisonment, with or without hard labour, and whipping in the case of a male offender under the age of sixteen (*vide* 24 & 25 Vict. c. 97, s. 39).

other ornament or work of art, (i.) in any church, chapel, meeting-house, or other place of divine worship; (ii.) in any building belonging to the Sovereign, or to any county or place, or public body, or to any university, or college or hall of any university, or to any inn of court; (iii.) in any street, square, churchyard, burial ground, or any public garden or ground;

- (c) Any statue or monument exposed to public view, or any ornament, railing, or fence surrounding such statue or monument;
- (d) The whole or any part of any tree, sapling, shrub, or underwood growing in any park, garden, or place which is either at all times or from time to time open for the admission of the public, or of any considerable number of persons, either as a public right, by permission of the proprietor, or by the payment of money as a condition of entering;

PART III.
churches,
etc.

Damaging
monu-
ments ex-
posed to
public
view.

Trees, etc.,
in public
parks and
gardens.

The actual injury or damage done to the property destroyed or damaged, in either of the said cases, exceeding the sum of five pounds in value.*

MALICIOUS INJURIES TO TOLL-BARS.

579. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without

Definition
and

* This limitation at present only applies to the offence comprised in sub-section (d). It would seem that it ought to apply equally to all the offences contemplated by this clause, minor injuries being left to be dealt with upon summary conviction.

PART III. hard labour, for any period not exceeding one year, and if a male under the age of sixteen years, to be once whipped :—
 punish-
 ment.

Whoever unlawfully and wilfully throws down, levels, or otherwise destroys, either wholly or in part :

(a) Any turnpike gate or toll-bar, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate or toll-bar, or set up or erected to prevent passengers from passing by without payment of any toll directed to be paid by any Act of Parliament relating thereto ;

(b) Any house, building, or weighing-engine erected for the better collection, ascertainment, or security of any such toll as aforesaid.*

MALICIOUS INJURIES TO TREES, ETC., IN PRIVATE PARKS AND GROUNDS.

Definition and punishment. 580. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding one year, † and if a male under the age of sixteen years, to be once whipped :—

Whoever unlawfully and wilfully cuts, breaks, roots up, or otherwise destroys or damages the whole or any part of any tree, sapling, shrub, or underwood growing in any park, pleasure-ground,

* The punishment for this offence is, at present, imprisonment without hard labour, and fine (*vide* 24 & 25 Vict. c. 97, s. 34, by which the offence is made punishable as for a misdemeanour).

† The punishment at present authorized is five years' penal servitude 24 & 25 Vict. c. 97, s. 20).

garden, orchard, or avenue, or in any ground PART III.
 adjoining or belonging to any dwelling-house, the
 actual injury or damage done thereto exceeding
 the sum of five pounds in value.*

MALICIOUS INJURIES NOT OTHERWISE PROVIDED FOR.†

581. Is guilty of an offence, and liable, upon conviction thereof respectively, to the punishment hereinafter provided :— Definition of offence.

Whoever wilfully, with intent unlawfully to injure or prejudice any person whatsoever, commits any damage, injury, or spoil to or upon any property whatsoever, as defined by this Code, whether public

* The limitation of value is at present one pound—an injury that may, I submit, be adequately dealt with upon summary conviction.

† The Malicious Injuries to Property Act (24 & 25 Vict. c. 97) provides, specifically and in express terms, for injuries to various kinds of property which would be included under the general words of this clause, and assigns different, and in some instances capricious, punishments for the same act when committed to different kinds of property. Thus, destroying hop-binds is punishable with fourteen years' penal servitude; killing and maiming cattle is punishable with similar severity, irrespective of the value of the damage done; killing or maiming any dog, bird, beast, or other animal not being cattle, is punishable summarily, upon conviction before a justice of the peace, with imprisonment, with or without hard labour, for any period not exceeding six months, or by fine; destroying trees, shrubs, and plants is punishable with different degrees of severity, varying from three months' imprisonment, or a fine, to five years' penal servitude; whilst the statute contains a general provision (*vide* s. 51) to meet the case of any damage exceeding five pounds in value, committed unlawfully and maliciously to or upon any real or personal property whatsoever, for which no other punishment is otherwise provided by the statute. Although I have to some extent simplified the manifold provisions dealing with the various forms of malicious injury to property, I am by no means clear that they do not admit of further condensation and improvement—a deficiency which arises not from any unwillingness on my part to bestow upon the drafting of these clauses whatever labour might be necessary to make them as nearly perfect as may be, but rather from a desire, which has guided me throughout, not to depart, except for grave cause, too radically from the form or substance of our existing laws.

PART III. or private, and for which some other punishment is not herein expressly provided, to the value of twenty pounds or upwards.

Punish-
ment of.

If the value of the property does not exceed one hundred pounds, the offender shall be liable to penal servitude for five years, or to be imprisoned, with or without hard labour, for any period not exceeding one year, and if a male under the age of sixteen years, to be once whipped.

If the value of the property exceeds one hundred pounds, but does not exceed one thousand pounds, the offender may be sentenced to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under the age of sixteen years, to be whipped.

If the value of the property exceeds one thousand pounds, the offender may be sentenced to penal servitude for twenty years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under the age of sixteen years, to be whipped.

RULE OF EVIDENCE APPLICABLE TO MALICIOUS INJURIES TO PROPERTY.

Not neces-
sary to
prove an
intent to
injure or
prejudice
any
particular
person.

582. Whenever, under any provision of this Code, any person is accused of having committed or caused to be committed any act with intent to injure or prejudice any person, it shall not be necessary to allege or to prove, in any trial or proceeding, that any

particular person was intended to be injured or pre-
judiced. Every such person who is proved to have
committed or caused to be committed any such act
shall be presumed to have committed the same with
intent to injure or prejudice, unless it shall appear or
be shown that such act was either not done or caused
wilfully, or that the same was done or caused to be
done upon some claim of right entertained in good
faith and upon reasonable grounds.

The expression "wilfully" means an act done by
a person who knows and intends to produce the con-
sequences that will probably result therefrom; or an
act done by any person who knows its probable
consequence, and is reckless whether such conse-
quence be produced or not.

PART III.

Definition
of term
"wilfully"

BURGLARY AND HOUSEBREAKING.*

583. Is guilty of an offence, and liable, upon con-
viction thereof, to penal servitude for twenty years,
or for any lesser term for which penal servitude may
lawfully be awarded, or to be imprisoned, with or
without hard labour, for any period not exceeding
two years :—Whoever :

Definition
and
punish-
ment of
burglary.

- (a) With intent to commit therein any offence
against this Code, between the hours of
nine of the clock in the evening of any

* Burglary, at common law, is the breaking and entering of the *dwelling-house* of another in the night-time, with intent to commit a felony therein (4 Black. Com., 224), and by statute (24 & 25 Vict. c. 96, s. 51) the offence is extended to the breaking out of the dwelling-house of another in the night-time, having committed a felony therein. Breaking and entering places of worship, warehouses, counting-houses, shops, etc., is regarded more leniently by our law. For the purposes of definition, the distinction appears unnecessary. In awarding punishment, it would be proper to be taken into account.

PART III.

day and six o'clock in the morning of the succeeding day, breaks and enters any house or building whatsoever ;

- (b) Being in any house or building whatsoever, breaks out thereof, between the said hours, having committed therein any offence against this Code.

Definition
and
punish-
ment of
house-
breaking.

584. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—Whoever :

- (a) Breaks and enters any house or building whatsoever, between the hours of six in the morning and nine at night, and commits therein any offence against this Code ;
- (b) Being in any house or building whatsoever, breaks out thereof, between the said hours, having committed therein any offence against this Code.

House-
breaking
with in-
tent to
commit an
offence
therein.

585. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever breaks and enters any house or building whatsoever, between the hours of six of the clock in the morning and nine o'clock at night, with intent to commit therein any offence against this Code.

Entering

586. Is guilty of an offence, and liable, upon con-

viction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years:—

PART III.
a dwell-
ing-house
at night
with in-
tent to
commit an
offence
therein.

Whoever enters any house or building whatsoever, between the hours of nine of the clock in the evening and six o'clock in the morning, with intent to commit therein any offence against this Code.

587. The expression “breaks,” whenever used in this Code in relation to any house or building whatsoever, means:—

Definition
of expres-
sion
“breaks.”

- (a) Breaking any part of a house or building, external or internal;
- (b) Picking or forcing any lock belonging to any part thereof, or opening the same with a key;
- (c) Lifting or loosening any fastening, or anything which is kept in position by its own or any other weight, and which is intended to cover any opening to such house or building, or to give access to any part of it, either without or within;
- (d) Entering any chimney or other aperture of any such house or building left open permanently by reason of the construction of such house or building, or for any necessary purpose;
- (e) Obtaining admission into any such house or building by means of any force, threat, or fraud, or by means of any collusion with any person therein.

PART III. 588. The expression "enters," applied to any house or building, means :—

Definition
of expres-
sion
"enters."

Any, the least, degree of entry into any house or building, with any part of the body, or with any instrument used in order to effect or aid in such entry or in the commission therein of any offence against this Code.

ROBBERY.

Definition
and
punish-
ment of
robbery.

589. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for any term not exceeding fourteen years, or for any lesser term for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and if a male under the age of sixteen years, to be whipped :—

(i.) Whoever, with intent fraudulently to deprive, takes any property from the person of another, or in his immediate presence, and for that purpose or in aid thereof, in either case, uses any actual violence to, or any threat of actual violence to, any person or property ; or uses or threatens to use any unlawful personal restraint towards any person.

Compel-
ling
delivery,
etc., of
property,
or execu-
tion, etc.,
of valuable
security :

(ii.) Whoever, either for himself or for any person, unlawfully demands, takes, or obtains, or knowingly compels, procures, or induces the delivery, transfer, grant, procurement, or surrender of any property from or by any person whatsoever ; or unlawfully compels any person to make, execute, destroy, alter, or cancel any valuable security, either wholly or in part, or to write, impress, or affix any name or seal upon any paper or parchment, in order that the same may be afterwards made or converted into, or used

or dealt with as, a valuable security, by either of the following means, viz. : PART III.

- (a) By the commission of actual violence to or unlawful restraint of the person of another, or by the threat of actual violence to or unlawful restraint of the person of, or of unlawful injury to the person, property, or reputation of, any person whatever, whether to be done or caused by the person making the threat, or by any other person, and whether to the person to whom such threat is communicated, or some other person ; By violence or injury to person, property, or reputation ;
- (b) By accusing, or threatening that any person whatever will accuse, any person whatsoever of any offence against this Code. whether there be any ground for such accusation or not, and whether or not such threat is intended to apply to the person to whom the same is communicated, or some other person ; By accusing, or threatening to accuse, of offence against this Code ;
- (c) By sending, delivering, or uttering, or directly or indirectly causing to be received, any letter or writing or anything rendered legible, knowing the contents thereof, with menace of actual violence, or unlawful restraint or injury to the person, property, or reputation of any person whatever, whether to be done or caused by the person making the threat, or by any other person, and whether to the person to whom such threat is communicated, or to some other person ; By means of letter threatening violence or injury to person, property, or reputation ;

PART III.

By letter
threaten-
ing to
accuse of
offence
against
this Code;

(d) By sending, delivering, or uttering, or directly or indirectly causing to be received, without lawful justification or excuse, any letter or writing or anything rendered legible, knowing the contents thereof, with accusation to be made by any person whatever, whether the person making the threat or any other person, against any person, that he has been guilty of any offence against this Code, whether there is any ground for such accusation or not, and whether or not such threat is intended to apply to the person to whom the same is communicated, or to some other person;

By
publish-
ing, or
threaten-
ing to
publish or
to abstain
from
publish-
ing, a libel.

(e) By publishing or threatening to publish, or directly or indirectly proposing or offering to abstain from or prevent the publication of, any matter or thing injurious to the character or reputation of any person whatsoever, whether such publication or abstaining from publishing is to proceed from the person making any such threat, proposal, or offer respectively, or from any other person, and whether such threat, proposal, or offer be communicated to the person whose character or reputation is intended to be affected, or to some other person.

ROBBERY WITH VIOLENCE.

Definition
and
punish-

590. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for twenty years,

or for any lesser period for which penal servitude may lawfully be awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, and (if a male) to be whipped or flogged according to his age :—Whoever :

PART III.
ment of
robbery
with vio-
lence.

- (a) Robs or attempts to rob any person, and in pursuance of, or after having committed or attempted to commit, such robbery, wounds, beats, strikes, or uses any other personal violence to any person ;
- (b) Being armed with any offensive weapon or instrument, robs, or assaults with intent to rob, any person ;
- (c) Being together with one or more other person or persons, robs, or assaults with intent to rob any person.

591. Is guilty of an offence, and liable, upon conviction thereof (except in any case where, under any provision of this Code, any greater punishment is authorized), to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years : *—Whoever :

Punish-
ment of
assaults
and
threats
with
intent to
rob.

- (a) Commits any assault with intent to rob ;
- (b) With intent to rob, uses threats, and thereby puts any one in bodily fear.

592. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for five years, or

Punish-
ment of
persons

* The punishment at present authorized for this offence by 24 & 25 Vict. c. 96, s. 42, is five years' penal servitude or imprisonment for two years as a maximum.

PART III. to be imprisoned, with or without hard labour, for any period not exceeding two years :—Whoever :

armed or
disguised
to commit
certain
offences,
or in pos-
session
of house-
breaking
instru-
ments.

- (a) With intent unlawfully to break or enter any house or building whatsoever, and commit therein any offence against this Code, or to commit any robbery, is found, at any time, either by day or night, armed with any dangerous or offensive instrument or weapon whatsoever ;
- (b) With the like intent, is found, between the hours of nine of the clock in the evening and six o'clock in the morning, having his face blackened or otherwise disfigured or disguised ;
- (c) Is found at night having in his possession, without lawful excuse (the proof whereof shall lie upon him), any housebreaking implement, or any implement or instrument whatever ordinarily used in the commission of either of the said offences ;
- (d) Is found in any house or building whatever, with intent to commit therein any offence against this Code, between the hours of nine of the clock in the evening and six o'clock in the morning.*

Being
found at
night in
house with
intent to
commit an
offence
therein.

* This clause proposes a salutary extension of the present law. It is not now an indictable offence to be found armed by day with these instruments or weapons, or even to be so found by night, unless with intent to break or enter a house or building (*vide* 24 & 25 Vict. c. 96, ss. 58 and 59). Throughout the clauses relating to burglary and house-breaking, the words "with intent to commit any offence against this Code" are used in lieu of (as now) "with intent to commit any felony therein." This is to some extent rendered necessary by the proposed abolition of the distinction between felony and misdemeanour, and the use of those expressions as distinctive terms. Obviously, however, the change is towards an extension of the existing law.

STOPPING A MAIL.

PART III.

593. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Definition
and
punish-
ment.

Whoever, with intent to rob or search the same, stops any conveyance by which any letter or packet, or any telegraphic message, transmitted by the post or telegraph under the authority of the Postmaster-General, or any person lawfully exercising the office of Postmaster-General for the time being, is carried, whether on land or water; or any person who is conveying or delivering any such letter, packet, or telegraphic message.

CHILD STEALING.

594. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years : *—Whoever :

Definition
and
punish-
ment of
child
stealing.

(a) With intent to deprive any parent, guardian,

* The maximum punishment for this offence, the commission of which may involve the most intense anguish and misery, is now seven years' penal servitude—a leniency in curious contrast to many of the vindictive punishments authorized where property is the subject matter of the offence; as, *e.g.*, (a) Theft of an article of the value of five pounds from a dwelling-house; theft of goods to the value of ten shillings in course of manufacture; embezzlement by clerks or servants; each of which offences may be visited with fourteen years' penal servitude (*vide* 24 & 25 Vict. c. 96, ss. 60, 62, and 68); (b) Cutting or destroying hop-binds in a hop-garden; or stealing a goat or a sheep—offences which the law apparently deems twice

PART III.

or *any** person having or being in the lawful care, or charge, or the possession of any child who is under the age of fourteen years, takes, decoys, entices, leads away, or detains any such child; or receives or harbours any such child, knowing it to have been so dealt with;

- (b) With intent to deprive any person whatsoever of any article upon or about the person of any child who is under the age of fourteen years, takes, decoys, entices, leads away, or detains any such child.

Proviso.

Provided that no person commits an offence against sub-clause (a), who does any of the acts therein mentioned under a belief, entertained in good faith, that he is entitled to the custody or possession of such child.

PERJURY.

Definition
and
punish-
ment of
perjury.

595. Is guilty of an offence, and liable, upon conviction thereof, to be sentenced to penal servitude for fourteen years,† or for any lesser term for which

as heinous as a crime which may break a father or a mother's heart, as for each of these offences against property fourteen years' penal servitude is the punishment authorized (*vide* 24 & 25 Vict. c. 97, s. 19); (c) Stealing money from a post letter, which is punishable with penal servitude for life (7 Will. 4 & 1 Vict. c. 36, s. 27); (d) Stealing a shilling after a previous conviction for felony, ten years' penal servitude (24 & 25 Vict. c. 96, s. 7); and many similar instances with which our law abounds.

* I use the word *any* in lieu of *other*, which is the term used in 24 & 25 Vict. c. 100, s. 56, in order to avoid any difficulty that might arise from the *ejusdem generis* rule of construction, and to extend the provision to every person having the lawful care or charge, whether standing *in loco parentis* or otherwise.

† At present the maximum term of penal servitude authorized in the case of a person convicted of perjury or subornation of perjury is seven years. When it is considered how many grave, cruel, and distinct wrongs

penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—Whoever :

PART III.

(a) At any time, in the course of any judicial proceeding, makes or asserts upon oath or solemn affirmation or declaration, either orally or in writing, and whether in open Court or otherwise, any statement of fact, opinion, knowledge, or belief, knowing the same to be false, or, being ignorant whether the same is true or false, intending to influence any such proceeding ;

(b) Counsels or procures any person to commit such offence, if the same is in fact committed by such person. ^{Subornation of perjury.}

A “judicial proceeding” within the meaning of this clause means any proceeding which is pending or being tried before either House of Parliament, or before any Committee of either House empowered to administer an oath ; or which is, or purports to be, held before, or under the authority of, or in relation to any matter pending in any Court of justice, civil or criminal ; or which is, or purports to be, held under or by virtue of any of the provisions of this Code, or any law or statute not repealed hereby, now or hereafter for the time being in force, which authorizes the holding, by any Court, person, or body of persons whatever, of any inquiry or investigation whatsoever, and the administration of an oath for or in relation to any or either of the purposes thereof. ^{Definition of “judicial proceeding.”}

the commission of perjury may involve, it is obvious that the crime is, in many cases, deserving of far heavier punishment.

PART III.

Defect in
constitution or
authority
of Court
etc., im-
material.

596. Any defect in the constitution or authority of any such Court, person, or body of persons, or in relation to the institution or validity of any proceeding in or before the same, or the conduct of, or time or place of holding, any such proceeding is immaterial.*

597. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour for any period not exceeding two years, whoever :—

Perjury
committed
otherwise
than in the
course of a
judicial
proceed-
ing.

(a) Being required or permitted by law to make any statement on oath or solemn affirmation or declaration, otherwise than in the course of any judicial proceeding, for falsely making or asserting which no greater punishment is specifically authorized by this Code, makes or asserts upon oath or solemn affirmation or declaration, either orally or in writing, any statement of fact, opinion, knowledge, or belief, knowing the same to be false, or being ignorant whether the same is true or false.

Making
false
statements
to or be-
fore any
person
by law
authorized
to receive
the same.

(b) Being required, permitted, or authorized by law to make without oath or affirmation any statement or declaration as to any matter of fact, opinion, knowledge, or belief, to or before any person authorized by law to receive the same, for making

* As the law now stands, to constitute perjury, the false evidence must have been given, on oath or affirmation, before a *competent* jurisdiction. Therefore, if it turn out that the Court before whom the false evidence was given had not in fact jurisdiction, or that the proceeding was not duly instituted, or that the Court was sitting in a wrong place, an indictment for perjury cannot be sustained (*vide* 1 Hawk. P. C. 69; R. v. Rawlings, 8 C. & P. 439; Reg. v. Hughes, D. & B. 188; Reg. v. Pearce, 32 L. J. (M. C.) 75; Reg. v. Townsend, 10 C. C. C. 356).

which no greater punishment is specifically authorized by this Code, makes any such statement or declaration, either orally or in writing, to or before any such person, knowing the same to be false, or being ignorant whether the same is true or false.*

PART III.

598. No person shall be convicted of any offence against either of clauses 595 and 597 of this Code upon the evidence of one witness only, to contradict the evidence or statement which is alleged to be false, unless the evidence of such one witness be corroborated by other material facts or testimony, proved independently of the evidence of such witness.

Rule of evidence.

No person shall be proceeded against or tried for perjury or subornation of perjury alleged to have been committed in the course of a judicial proceeding which is then pending, save and except by

* There are a mass of statutes—certainly exceeding fifty in number—in force, having reference each to some distinct subject of legislation, and which contain a section or sections enacting that the making of certain false statements, declarations, or certificates shall be punishable as perjury, or as misdemeanours; and others, enacting that certain acts shall be deemed to be, and punishable as, forgery. In no other sense are these penal statutes. It would be quite impracticable, within the proper limits of any Code to draft a set of clauses descriptive of each particular form of offence comprised in these miscellaneous acts. The sections by which such offences are created are so interwoven with the other provisions of the same statutes that to simply extract them would be useless. It would be easy to include the whole of these statutory enactments in the form of a schedule, and to draft a clause providing that any one committing any of the acts declared unlawful commits an offence against the Penal Code, and shall be liable, upon conviction thereof, to a given punishment. This, however, would still render necessary a reference to the statutes themselves—a course which is, in my view, opposed to the primary condition of a Code, which should embrace the definition of every offence, and be complete and perfect within itself. On the other hand, the danger of an enactment framed in general terms is that, however carefully drawn, it may leave unreached some form of mischief contemplated by the legislature.

PART III. direction of the Court in which such proceeding is so pending.*

CONSPIRACY TO BRING A FALSE ACCUSATION.

Definition and punishment of conspiracy to bring a false accusation of offence against this Code.

599. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :†—

Whoever conspires with any other person falsely to accuse any person, or to cause any person to be falsely accused, of any offence against this Code.

Definition and punishment of conspiracy to bring a false accusation of offence punishable on summary conviction.

600. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding one year :—

Whoever conspires with any other person falsely to accuse any person, or to cause any person to be falsely accused, of any offence punishable upon summary conviction before a magistrate or justice.

CONSPIRACY TO DEFEAT OR-PERVERT JUSTICE.

Definition and punishment of conspiracy to pervert or obstruct

601. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or

* This clause would give the sanction of law to a practice which may be said to be general, viz. not to try a charge of perjury arising out of litigation which is actually pending, a course which the Court of Queen's Bench has held to be "the most likely to further the ends of justice" (*vide* Reg. v. Ingram, 19 L. J., M. C. 69).

† A conspiracy to bring a false accusation is at present an offence at common law, punishable by imprisonment (to which hard labour is now authorized to be added; *vide* 14 & 15 Vict. c. 100, s. 29).

without hard labour, for any period not exceeding two years :—

Whoever conspires with any other person with a view unlawfully, by any means whatsoever, to pervert, hinder, obstruct, or defeat the due course of law and justice.

PART III.
—
the due
course of
justice.

602. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for two years :—

(a) Whoever conspires with any other person with a view unlawfully to obstruct or prevent the lawful execution of any criminal process granted or issued under the provisions of this Code ;

Conspiracy
to obstruct
or prevent
the law-
ful execu-
tion of
criminal
process.

(b) Whoever attempts or endeavours, by any means whatsoever, unlawfully to pervert, hinder, obstruct, or defeat the due course of law or justice ; or obstruct or prevent the lawful execution of any criminal process granted or issued under the provisions of this Code.*

Attempt
to pervert
or obstruct
due course
of justice,
or the law-
ful execu-
tion of
criminal
process.

603. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Corruption
of jurors.

Whoever, from whatever motive, by any means whatever save such as are prescribed by law :

(a) Influences or compels, or attempts to influence or compel, any person who is either acting, or known or believed to be about

* These are offences at common law. It is also a misdemeanour at common law to obstruct, or interfere with, or knowingly prevent the execution of *civil* process (*vide* Russell on Crimes, vol. i. 569–571). This, however, I submit, is more properly punishable, as it at present also is, as a contempt of the Court out of which the process issues.

PART III.

to act, as a juror in any judicial proceeding, whether civil or criminal, in his conduct or capacity as such, or endeavours to incline any such person to be more favourable to the one side than to the other in such proceeding ;

- (b) Being a person acting, or who knows or believes that he is about to act, or who has acted as such juror, accepts or demands from any person any money, money's worth, or reward whatever, directly or indirectly, under pretence or on account of anything alleged to have been done or to be done by such person in his capacity as a juror, whether he in fact acts as such or not.

FORGERY.

Defini-
tions of
forgery :

604. Is guilty of the offence of forgery, and liable, upon conviction thereof, to the punishments hereinafter respectively provided :—

Whoever, with intent that he or any other person may directly or indirectly defraud, prejudice, or injure either the public at large or any person, whether within the dominions of the Sovereign for the time being of these realms or otherwise ; or prevent the due course of justice, or defeat or evade the provisions of any law for the time being in force—whether any or either of such results be, in fact, possible or not :

Forging
a docu-
ment pur-
porting to
be made by
another,
or by some

- (a) Makes any document which purports, either in its entirety or in some material particular, to be made by some person who did not make or authorize the making of

the same; or to be made by or on behalf of some person who does not in fact exist; PART III.
fictitious
person.

- (b) Makes, either wholly or in part, any document in any material respect purporting to be what it is not, or to have an operation that it has not; or otherwise intended and reasonably calculated to lead to the belief that it is what it is not, or that it has an operation that it has not; Making a
forged
document.
- (c) Alters any genuine document in any material respect, either by addition, omission, or obliteration, so as to make it purport to be what it is not, or to have an operation that it has not; or which is otherwise intended and reasonably calculated to lead to the belief that it is what it is not, or that it has an operation which it has not; Forging
alteration,
etc., of
genuine
document.
- (d) Obtains the signature of, or the execution or authentication by, any person to or of any document whatever, by knowingly representing such document to be in any material respect different from what it in fact is; Obtaining
execution
of docu-
ment by
fraud.
- (e) Having possession of any blank signature, makes any document, of which such signature forms part, inconsistent with the purpose for which such signature was given, knowing or having reasonable cause to believe that such signature was not given or intended to be so used; Fraudu-
lent abuse
of blank
signature.
- (f) Without lawful authority or excuse makes or executes, draws, signs, accepts, or indorses any document for, or in the name Executing
etc., docu-
ment by
procura-
tion with-

PART III.

out lawful
authority.

Uttering
a forged
document.

of, or on the account of another, by procurement or otherwise.

- (g) Tenders, puts off, uses, attempts to tender, put off, or use, disposes of, or endeavours to dispose of, or causes or endeavours to cause any person to act under, upon, or by virtue or upon the faith of any document, knowing the same to have been forged; that is to say, made, altered, obtained, dealt with, executed, drawn, signed, accepted, or endorsed in either of the manners mentioned in the several sub-clauses (a), (b), (c), (d), (e), (f), whether such document was forged in England or elsewhere wheresoever.

Definition
of "docu-
ment."

The expression "document" in this clause includes seals, stamps, and all instruments whatsoever written, printed, or otherwise rendered legible, for forging which any punishment is prescribed in clause 607 of this Code, or anything of a like or similar character thereto. It is immaterial whether or not the document relates or purports to relate to property, or to be payable in England or elsewhere wheresoever.

Definition
of "bank-
note,"
"ex-
chequer
bill," and
"bank-
note
paper."

The expression "bank-note," wherever used herein, means and includes any note, bill of exchange, bank post-bill, or order or undertaking for the payment of money, whether under seal or not, issued by any person, company, or body corporate carrying on the business of banking in any part of the world, or by or by the authority of any foreign Prince, State, or Government.

The expression "exchequer bill" includes exchequer bonds and debentures, and means any bill, bond, or debenture issued by or under the authority of the Treasury.

The expression "exchequer bill paper" means any paper provided or used by or by direction of the Commissioners of Inland Revenue, or of the Treasury, for the purpose of being used for exchequer bills; or so prepared as to resemble or pass for any paper used for such purpose. PART III.

The expression "bank-note paper" means any paper whatsoever made for the purpose of making or being made into bank-notes as hereby defined, and having any watermark, curved or waving bar lines or wire lines, or any word, device, ornament, number, sum, or amount, or other distinguishing mark, appearing visible in the substance of or impressed upon the paper; or so prepared as to resemble or pass for any paper used for the manufacture and issue of bank-notes.

605. It is immaterial in any case whether any document in respect of which forgery is committed is or is not a complete document, or one binding in law, if it is so made and is such as to be intended to deceive. Forged document need not be complete or binding in law to constitute an offence.

606. Whenever any person is accused of forgery, it shall not be necessary to prove an intent to defraud, prejudice, or injure any particular person, or that any person was in fact defrauded, prejudiced, or injured; but it shall be sufficient to prove that the accused did the act charged with an intent to defraud, prejudice, or injure. Not necessary to prove an intent to defraud any particular person.

607. Every person who is convicted of forgery shall be liable to penal servitude for life, or for any lesser term for which penal servitude may lawfully Punishment of forgery:

PART III. be awarded, or to imprisonment, with or without hard labour, for any term not exceeding two years :—

If document forged be :—the Great Seal, Privy Seal, signet, or other seals, or royal Sign Manual; or public seal of any dominion, colony, or possession of the Crown, or of any foreign prince, state, or country; or any stamp or impression there-of.

A will or other testamentary disposition.

An exchequer bill.

A transfer of Government stock.

A transfer of stock of any public body or company.

(i.) If the document or thing forged is, or purports to be :

- (a) The Great Seal of the United Kingdom ; the Privy Seal of the Sovereign for the time being of these realms ; any privy signet of such Sovereign, or his royal Sign Manual ; any of the Sovereign's seals appointed by the 24th article of the Union between England and Scotland ; the Great Seal of Ireland, or the Privy Seal of Ireland ; or any public seal of any dominion, colony, or possession of the Crown ; or the seal of any foreign Prince, State, or Country ; or sealed with either of the said seals ; or the stamp or impression of any of the seals aforesaid ;
- (b) A will, codicil, or other testamentary disposition whatsoever of any person, whether living or dead ; or any probate or letters of administration ;
- (c) An exchequer bill ;
- (d) Any transfer of any share or interest of or in any stock, annuity, or other public fund of the United Kingdom, or of any of the dominions of the Sovereign for the time being of these realms, or of any foreign Prince, State, or Country ;
- (e) Any transfer of any share or interest of or in the capital or other stock of any public body, body corporate, company, or society whatsoever ;

- (f) Any power of attorney or other authority PART III.
to sell or transfer any share or interest as A power of attorney for transfer of stock.
is mentioned in the last two preceding sub-clauses respectively, or to receive any dividend or money accruing or payable in respect of any such share or interest ;
- (g) Any entry in any book or register, or any Entry in register of stocks, or share certificate, or coupon.
stock certificate, or coupon, share warrant or certificate, or other document evidencing the title of any person to or in any such stock, annuity, funds, dividend, or money as aforesaid ;
- (h) Any document evidencing the title of any Debentures, etc.
person to or in any portion of the debt of any dominion of the Sovereign for the time being of these realms or of any foreign Prince, State, or Country ;
- (i) Any endorsement or assignment of any Any endorsement or assignment of any of foregoing documents, or receipt for interest.
document in either of the foregoing sub-clauses mentioned ; or any receipt or certificate for interest or dividend accruing or payable thereon ;
- (j) Any bank-note ; Bank-notes.
- (k) Any certificate or other document relating Documents relating to land or hereditaments for the purpose of obtaining registration or declaration of title.
to land or the title thereto, required or intended for the purpose of obtaining the registration of any deed, or the recording or declaring of any title ; or any declaration under the provisions of the " Declaration of Title Act, 1862," or any other like or similar statute for the time being in force, in relation to the registration of deeds, or the recording or declaring of any title to or charge upon land ;

PART III.

Docu-
ments
forming
or evi-
dencing
title to
land and
heredita-
ments.

Docu-
ments
relating to
redemp-
tion of
land-tax.

Bills of
sale.
Mercantile
docu-
ments.

A valuable
security.

- (l) Any document, whether an original or certified copy, being or containing evidence of or forming, either wholly or in part, the title of any person to any land, tenement, or hereditament of any kind or tenure whatsoever, or to the possession or control thereof, or to any part or share of, or estate or interest in or out of, any such land, tenement, or hereditament; or any mortgage or charge thereon; or being or containing evidence of the conveyance or reconveyance, assignment or reassignment, release or other extinguishment, of any such mortgage or charge;
- (m) Any contract, certificate, receipt, or other document mentioned in any Act of Parliament relating to the redemption of the land-tax;
- (n) A bill of sale of any property;
- (o) A bill of lading, dock-warrant or certificate, delivery order for goods in any bonded place or warehouse, or any other document used in the ordinary course of trade or business as proof of the possession or control of goods, or authorizing the holder, either by endorsement or delivery, to transfer or receive any goods or merchandise; or any endorsement or assignment of any document mentioned in this sub-clause;
- (p) Any other valuable security as defined by this Code, and which is of the value of one thousand pounds or upwards; or any

acceptance, endorsement, or assignment thereof. PART III.

- (q) Any record of any Court of justice, or document, or copy of or extract from any document, belonging to, or purporting to emanate from, any Court of competent jurisdiction, either in the United Kingdom or any foreign State; or from or to be signed or countersigned by the Paymaster-General, or any deputy, officer, or clerk of the Paymaster-General; or to be taken before any officer by law authorized to take the same; or be a document used, or intended to be used, as evidence, or being or forming part of the proceedings, in any such Court in the kingdom; or to be any document, or copy authorized by law of any document, or certificate, entry, memorandum, endorsement, or otherwise, or any authorized copy thereof, which is either made, or is admissible in evidence on production, under this or any Act of Parliament of the United Kingdom for the time being in force; A copy of or extract from any Court record or document intended to be used in evidence.
- (r) Any order whatsoever directed to the governor and company of the Bank of England, purporting to authorize the payment by them of money on account of the State or of any Government department, or out of any fund payable upon the order or authorization of any officer either of any Government department, or of the High Court of Justice, or any division Orders on Bank of England for payment of money on account of any public department, or under control of a Court of justice.

PART III.

thereof, or of the High Court of Criminal Justice.

Public
book or
entry re-
lating to
births,
baptisms,
marriages,
deaths, or
burials.

(ii.) If the document be a register of births, baptisms, or other ceremony deemed equivalent thereto by the laws or ordinances of any religious body which is recognized as lawful by the laws of the United Kingdom; or a register of marriages, deaths, or burials authorized or required by law to be, or usually kept; or any copy of any register required by any law for the time being in force to be transmitted by or to any public officer or department; or any certified copy of any such register or any part thereof; or any entry in any such register or copy relating to any birth, baptism or other equivalent ceremony, marriage, death, or burial. Or—

Public
stamps.

(iii.) If the document be a stamp required by law to be affixed to, or impressed upon, or applied to any document or thing whatever.

608. Every person who is convicted of forgery shall be liable to penal servitude for twenty years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, if the document forged is or purports to be :—

Valuable
securities
worth
£100, but
less than
£1000.

Any valuable security, as defined by this Code, for the forgery of which no greater punishment is hereinafter authorized, and the value of which is one hundred pounds, but does not amount to one thousand pounds; or any acceptance, endorsement, or assignment thereof.

609. Every person who is convicted of forgery

shall be liable to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, if the document forged is or purports to be :—

Any valuable security, as defined by this Code, for the forgery of which no greater punishment is hereinbefore authorized, and the value of which is less than one hundred pounds; or any acceptance, endorsement, or assignment thereof.

Valuable securities worth less than £100.

610. Every person who is convicted of forgery shall be liable to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, if the document forged is or purports to be :—

A certified copy of any entry in or extract from any register of births, baptisms or other equivalent ceremony as hereinbefore mentioned, marriages, deaths, or burials;

Certified copy of entry or extract from register of births, etc.

Any certificate or declaration required or authorized by any statute for the time being in force relating to births, deaths, or marriages;

Certificate required by any statute relating to births, etc.

Any licence for the celebration of marriage which is authorized to be given under any law for the time being in force;

Marriage licence.

Any licence, certificate, or permit by any Government department or officer under any Act of Parliament for granting or raising supplies, or otherwise relating to the public income;

Licence issued by any Government department.

Any document to sustain any claim or application in relation to any pay, wages, allotment of prize-

Documents relating to

PART III. money, bounty, grant, allowance, half-pay, pension, or pay, etc., other money or effects from any Government department, or public body or institution, to any officer or persons in person serving or who has served in the army or navy, etc. navy, or otherwise in the public service of the Crown, or any widow or child of any such officer or person; or to procure either of the aforesaid persons to be admitted a pensioner;

Docu-
ments
under
Merchant
Shipping
Acts.

Any register of British ships or vessels, or any certificate of survey or registry of any British ship or vessel, declaration of ownership, bill of sale, instrument of mortgage, certificate of mortgage or sale, or any entry or endorsement required by any Act in relation to merchant shipping at any time now or hereinafter in force.

611. Every person convicted of forgery shall be liable to penal servitude for five years, or to be imprisoned, with or without hard labour, for any period not exceeding one year, if the document forged is or purports to be:—

False
certificates
of cha-
racter and
position.

A certificate or other document intended to lead to the belief that any person belongs to a profession to which he does not belong, or holds some recognized position which he does not hold, or to vouch the character of any person for any employment, situation, or position, or in order that credit may be given to any person;

Master's
certificate
as to
qualifica-
tion, etc.,
of seamen.

A master's certificate or report of the service, qualifications, conduct, or character of any seaman;

Register
of
chemists.

Any register, or entry in any register, relating to the registration of pharmaceutical chemists, or chemists, or druggists;

Any document whatsoever (not hereinbefore specifically mentioned or included) which is intended to enable or aid any person whatsoever to defraud, prejudice, or injure the public or any person, either directly or indirectly; or to prevent the due course of justice, or to defeat or evade the provisions of any law for the time being in force, whether any or either of such results be in fact possible or not.

PART III.

Any other document intended to defraud, injure, or deceive.

612. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years : *—

Definitions and punishment of offences preparatory to forgery of exchequer bills, bank-notes, and bonds.

Whoever, without lawful authority or excuse (the proof whereof shall be upon the person accused) :

- (a) Either wholly or in part makes, or uses, purchases, sells, offers for sale, puts off, or knowingly has in his custody or possession, (i.) any frame, mould, instrument, machinery, plate, substance, or material of any kind whatsoever for making exchequer bill paper, or bank-note paper; or for working any thread, line, mark, or device into the substance of any paper, intended to imitate any thread, line, mark, or device peculiar to and appearing in any paper used for exchequer bills or bank-notes; (ii.) any die, stamp, or seal

* Certain of the offences comprised in this clause are punishable by a maximum of seven years', others by a maximum of fourteen years', penal servitude (*vide* 24 & 25 Vict., c. 98, ss. 9, 10, 14, and 16). There seems no sufficient reason for the distinction.

PART III.

- peculiarly used for preparing or sealing, or any plate for printing the whole or any part of any exchequer bill or bank-note, or any plate, die, stamp, or seal; intended to imitate the whole or any part of any such plate, die, stamp, or seal; (iii.) any paper used for exchequer bills or bank-notes;
- (b) Takes any impression of any such plate, die, stamp, or seal;
- (c) Engraves or in any manner makes upon any plate, either wholly or in part, anything appearing in, or apparently intended to resemble an exchequer bill or bank-note; or upon any substance or material whatsoever engraves, makes, or causes to appear visible any word, mark, or device peculiar to and appearing in any paper used for exchequer bills or bank-notes; or intended or apparently intended to imitate the same, or any signature appearing in any such bill or note;
- (d) Uses, or knowingly has in his custody or possession, any such plate or other substance or material whatsoever; or any instrument or device for making or printing, either wholly or in part, any exchequer bill or bank-note;
- (e) Purchases or receives from any person, or has in his custody or possession, any forged bank-note or forged blank bank-note, knowing the same to be forged;
- (f) Engraves or in any manner makes upon

any plate, or upon any substance or material whatsoever, either wholly or in part, anything purporting to be, or apparently intended to resemble, any bond or undertaking for the payment of money of any dominion, colony, or possession of the Sovereign, or of any foreign Prince, country, or State, or of any public body or body corporate, whether within or without the Sovereign's dominions ;

- (g) Uses, or knowingly has in his custody or possession, any such plate, substance, or material whatsoever ;
- (h) Offers, puts off, tenders, or disposes of any such plate, substance, or material, or any instrument or device for making or printing, either wholly or in part, any such bond or undertaking as is mentioned in sub-section (f) of this clause, or any paper upon which any part of such bond or undertaking has been printed or caused to appear visible.

613. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Using probate or letters of administration obtained by or through forgery or perjury.

Whoever demands, receives, obtains, or causes or procures to be delivered or paid to any person whatsoever, any property whatsoever, under, upon, or by virtue of any probate or letters of administration,

PART III. knowing the will, codicil, or other testamentary writing on which such probate or letters of administration have been obtained to be forged, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation, affidavit, or solemn declaration.

614. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Making
false en-
tries in
books re-
lating to
the public
funds.

Whoever, with intent to defraud or injure any person whatsoever ;

- (a) Makes any false entry in, or alters any word or figure in, any of the books of account kept by the governor and company of the Bank of England, in which are kept the accounts of the owners of any stock, annuities, or other public fund which now are, or at any time hereafter are, transferable at the Bank of England ;
- (b) Falsifies any of the accounts of any of such owners in any of the said books ;
- (c) Makes any transfer of any share or interest of or in any stock, annuity, or other public fund which now is, or at any time hereafter is, transferable at the Bank of England, in the name of any person not being the true owner of such share or interest.

615. Is guilty of an offence, and liable, upon con-

viction thereof, to penal servitude for seven years, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, being a clerk, officer, servant, or person in the employment of, or entrusted by, the governor and company of the Bank of England, with intent to defraud, makes out or delivers any dividend warrant, or warrant for payment of any annuity, interest, or money payable at the Bank of England, for a greater or less amount than the person on whose behalf such warrant is made out is entitled to.

Persons in the employment of the Bank of England fraudulently making out false dividend warrants.

616. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever forges any name, handwriting, or signature purporting to be the name, handwriting, or signature of a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any stock, annuity, or other public fund which now is, or at any time hereafter is, transferable at the Bank of England ; or of or in the capital or other stock of any public body, body corporate, company, or society established under any charter or statute now or hereafter for the time being in force.

Forging attestation.

PART III.

OFFENCES RELATING TO STAMPS.

Defini-
tions
and
punish-
ment.

617. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser period for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years : *—Whoever :

- (a) Forges, either wholly or in part, any die, plate, or implement whatsoever capable of, or intended to be used for, making an impression of any stamp, whether impressed or adhesive, used for any of the purposes of revenue by the Government of the United Kingdom, or by the Government of any possession or colony of the Sovereign, or by any foreign Prince, State, or country; or by the Commissioners of Inland Revenue in England, for expressing or denoting any duty, or the fact that any duty or penalty has been paid, or that any instrument is duly stamped or is not chargeable with duty;
- (b) Makes any impression upon any material with any such forged die, plate, or instrument.
- (c) Forges any such stamp as aforesaid;
- (d) Cuts, tears, or in any way removes from any material any such stamp, with intent that any fraudulent use should be made of any such stamp, or of any part thereof;

* This is the punishment authorized by 33 & 34 Vict. c. 98, for each of the offences comprised in this clause. The statute extends, however, only to British stamps.

- (e) Mutilates any such stamp, with intent that any fraudulent use should be made of any part of such stamp ;
- (f) Fraudulently fixes or places upon any material, or upon any such stamp, any stamp or part of a stamp which, whether for any fraudulent purpose or not, has been cut from or in any way removed from any other material, or out of or from any other stamp ;
- (g) Erases or otherwise, either really or apparently, removes from any other material bearing any such stamp as aforesaid, any name, sum, date, or other matter or thing whatsoever thereon written, with the intent that any fraudulent use should be made of the stamp upon such material ;
- (h) Sells or exposes for sale, or uses, tenders, or put off, any such forged stamp, or any stamp which has been dealt with in either of the manners aforesaid ;
- (i) Knowingly and without lawful excuse (the proof of which shall lie upon the accused) has in his possession any such forged die or stamp as aforesaid ; or any such stamp, or part of any such stamp, which has been torn, cut, or otherwise removed from any material, or mutilated for any fraudulent purpose ; or any material having such stamp as aforesaid, out of which any name, sum, date, or other matter or thing has been, for any fraudulent purpose, erased or otherwise, either really or apparently, removed.

PART III.

Rule of
evidence
in case of
licensed
dealers.

618. If any stamps, either forged or which have been fraudulently dealt with in any of the manners in either of the sub-sections of the last preceding clause mentioned, are found in the possession of any person appointed to sell or distribute stamps, or being or having been licensed to deal in stamps, such person shall be presumed and taken, unless the contrary is satisfactorily proved, to have had the same in his possession, knowing the same to have been forged or so fraudulently dealt with, and with intent to sell, use, or utter them.*

OFFENCES IN RELATION TO TRADE-MARKS, ETC.

Definition
of expres-
sion
"trade-
mark."

619. A trade-mark within the meaning of this Code is :—

- (i.) Any word, letter, name, signature, label, sign, seal, stamp, emblem, device, or mark whatsoever lawfully used by any person, whether a British subject or not, to denote anything to be of the manufacture, workmanship, production, or merchandise, or to be an article of a particular description, made or sold by such person; or used for the like purpose by any body corporate or body of the like nature, whether constituted according to the law of this country, or of any of the Sovereign's colonies or dominions, or according to the law of any foreign country or place; or any company, association, or society of persons, whether the members thereof

* This clause is taken from s. 22 of the statute cited in the preceding note. I am disposed, however, to question its justice.

be British subjects or not, or some of them British subjects and some of them not, and whether carrying on business within the United Kingdom or elsewhere wheresoever, or partly within the United Kingdom and partly elsewhere ;

- (ii.) Any word, letter, name, signature, label, sign, seal, stamp, emblem, device, or mark whatsoever which, in pursuance of any statute for the time being in force relating to registered designs, is to be put or placed upon or attached to anything during the existence or continuance of any copyright or other sole right acquired under the provisions of any such statute.

A customary mark within the meaning of this Code is any word, letter, name, signature, label, brand, sign, seal, stamp, emblem, device, or mark whatsoever, which is by custom or recognized practice understood to denote that anything is certified to be of a particular character or quality.

Definition of expression "customary mark."

620. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Definition and punishment of offences against trade and customary marks.

Whoever, with intent that he or any other person whatever may injure or deceive any person whatsoever :

- (a) Fabricates or fraudulently imitates, either wholly or in part, any trade-mark or customary mark ;
- (b) Uses or has in his possession any trade-mark or customary mark, knowing the

PART III.

same to have been fabricated or fraudulently imitated ;

- (c) Applies any trade-mark or customary mark, whether genuine or which has been fabricated or fraudulently imitated, to anything intending to indicate or cause it to be believed that the thing to which it is applied, or the contents thereof, is or are that which is denoted or intended to be denoted thereby, knowing that it or they is or are not so in fact ;
- (d) Encloses or places anything in, upon, under, or with anything whatsoever to which any such genuine trade-mark or customary mark has been falsely applied, or to which any trade-mark or customary mark which has been fabricated or fraudulently imitated has been applied ;
- (e) Encloses, places, or attaches anything in, upon, under, or with anything whatsoever having thereon any genuine trade-mark or customary mark ;
- (f) Has in his possession anything to which any such trade-mark or customary mark as is in the last preceding sub-clause mentioned has been applied, knowing that such thing, or the contents thereof, is or are not that which is denoted or intended to be denoted thereby.

Forfeiture
of property
used in
commis-
sion of
offences in
relation to

Every person who commits either of the offences comprised in this clause shall, in addition to the punishment thereby authorized, forfeit everything belonging to or in the possession or power of such

person to which he has unlawfully applied or caused to be applied, or which he has in his possession or power for the purpose of applying or causing to be applied, any such trade-mark or customary mark as aforesaid, and every instrument in his possession or power by means of which any such trade-mark or customary mark has been or may be so applied. The Court before whom any such person is tried may make such order as to the mode in which any property so forfeited is to be dealt with or disposed of as it shall think fit.

PART III.
trade-
marks.

OFFENCES IN RELATION TO HALL-MARKS.

621. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Forging,
etc., hall-
marks.

Whoever, with intent to defraud or deceive any person whatsoever :

- (a) Forges any die used for marking gold or silver wares ; or the mark or impression of any such die ;
- (b) Uses any genuine die for marking any gold or silver wares fraudulently ;
- (c) Marks any gold or silver wares with a die, knowing the same to be forged ;
- (d) Transposes, removes, cuts, or severs any genuine marks to or upon any gold or silver ware, with intent to affix the same to or on other wares ;

PART III.

(e) Affixes any such mark so cut, severed, or removed, to any other substance.

FRAUDULENT PERSONATION OF OWNERS OF PROPERTY.*

Definition
and
punish-
ment.

622. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser term for which penal servitude may be law-

* The law in relation to this offence, so far, at all events, as regards the diversity of punishment authorized for acts involving degrees of criminality, is in a very unsatisfactory state. Thus, the fraudulent personation of a soldier is punishable with penal servitude for life (*vide* 7 Geo. 4, c. 16, s. 38), whilst the like act committed in relation to a seaman is punishable with a *maximum* of five years' penal servitude, and may even be dealt with summarily before a magistrate or justice, in which case six months' imprisonment, with or without hard labour, is the extreme punishment (28 & 29 Vict. c. 124, s. 8). The offences comprised in this clause are punishable with penal servitude for life (*vide* 24 & 25 Vict. c. 98, s. 3; 26 & 27 Vict. c. 73, s. 14; 30 & 31 Vict. c. 131, s. 35; 33 & 34 Vict. c. 58, s. 4; and the recent statute 37 & 38 Vict. c. 36, "The False Personation Act, 1874"). In deference to this latest act of the legislature, I have suggested the same maximum punishment for all acts of personation made with intent fraudulently to obtain property. At the same time, it is obvious that acts which are within the statutes relating to personation differ widely in the degree of criminality, and particularly so when the act constituting the offence is a false assumption of a character to which the person assuming it has no lawful right; as, *e.g.*, how immeasurably different the criminality of a woman representing herself as the widow of a deceased soldier or seaman, with intent to obtain the wages or other money due to him at his death, who, although holding towards the deceased, in his lifetime, the position and fulfilling the duties of a wife, had not been, in fact, lawfully married to him; and an impostor endeavouring, by personating another person, to obtain a valuable estate, or, by such fraudulent personation, obtaining the transfer or payment to himself of stock or money to the value of perhaps thousands of pounds—an offence equal in its heinousness to the gravest form of forgery.

It would probably, therefore, be more desirable to apportion the punishment for various species of this offence, so as to temper the discretion vested in a judge by an express enactment by the legislature as to what should be the extent of punishment authorized in different cases of fraudulent personation.

fully awarded, or to be imprisoned, with or without PART III.
hard labour, for any period not exceeding two years :—

Whoever falsely and deceitfully personates, or causes any other person to personate :

- (a) Any owner of any share or interest of or in any stock, annuity, or other public fund which is transferable at the Bank of England ;
- (b) Any owner of any share or interest of or in the capital or other stock of any public body, body corporate, company, or society established by charter, or under or by virtue of any Act of Parliament now or hereafter for the time being in force ;
- (c) Any owner of any dividend, coupon, certificate, or money payable in respect of any such share or interest as aforesaid ;
- (d) Any person authorized by any power of attorney, or other authority, to transfer any such share or interest as aforesaid, or to receive any dividend or money payable upon or in respect of any such coupon, certificate, or otherwise, or upon or in respect of any such share or interest as aforesaid, on behalf of the owner thereof or of the person entitled thereto ; and who thereby transfers or endeavours to transfer any such share or interest belonging to any such owner as aforesaid, or thereby receives or endeavours to receive any stock, certificate, warrant, coupon, or money deliverable or payable to any such owner or person as aforesaid,

PART III.

as if such offender were the true and lawful owner, or the person entitled to receive the same.

- (e) Any person whatsoever, or the heir, executor, administrator, assignee, or other representative, wife, widow, child, next of kin, relation, devisee, legatee, or creditor of any person, with intent thereby fraudulently to obtain any property whatsoever, whether real or personal, or any interest therein.*

Fraudulently acknowledging recognizance, etc.

623. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, without lawful authority or excuse, acknowledges in the name of any other person any recognizance or bail, or any *cognovit actionem* or judgment, or any deed or other instrument, before any Court, Judge, or other person lawfully authorized to take or receive the same.

OFFENCES AGAINST PUBLIC COIN.†

Definition of expressions :
“Current coin.”

624. The expression “current coin,” whenever used in this Code, means any coin coined in any

* The expressions “assignee, or other representative, child, devisee, legatee, or creditor” are not contained in “The False Personation Act, 1874.” The fraudulent personation of each of this class of persons upon an estate involves, however, the very mischief against which the statute was directed.

† The law at present draws a distinction, as regards the degrees of

mint by law established in the United Kingdom or other of the dominions of the Sovereign for the time being of these realms, or which is lawfully current in the United Kingdom or other of the Sovereign's dominions, by virtue of any proclamation or otherwise ; and it includes all gold, silver, and copper coin, and any coin of bronze or mixed metal, coined in any of the said mints, or lawfully current, by virtue of any proclamation or otherwise, in the United Kingdom or other of the dominions of the Sovereign.

625. The expression "false or counterfeit coin" means any coin or token not in fact genuine, and whether in a finished or unfinished state, but made or intended to be made with intent to resemble, or so as apparently to resemble, or pass for genuine coin ; or any genuine coin fraudulently gilded, silvered, washed, coloured, cased over, or otherwise altered in any way whatever, so as apparently to resemble or pass for coin of a higher denomination than it in fact is ; and genuine coin fraudulently clipped, filed, or otherwise diminished in size or weight, and coin partly genuine and partly false.

626. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser period for which penal servitude may be law-

PART III.

"False or counterfeit coin."

Definitions and punishment:

punishment, between counterfeiting and uttering gold and silver coin, and the like offences when the subject matter is copper coin ; and also a somewhat similar distinction between offences relating to coin current in Her Majesty's dominions, and the same offences in relation to coin of any foreign country (24 & 25 Vict. c. 99). Whilst fully taking into account the very valid grounds upon which these distinctions are founded, I submit that the balance of argument and expediency is against their retention in the case, at all events, of the graver form of offences against public coin.

PART III. fully awarded, or to be imprisoned, with or without
 — hard labour, for any period not exceeding two
 years :—

Making
counterfeit
coin.

(a) Whoever makes, either wholly or in part,
any false or counterfeit coin as defined by
this Code ;

Gilding or
silvering
counter-
feit coin
with
intent to
convert
into
counter-
feit coin.

(b) Gilds or silvers, or washes with any material
intended to produce the colour or appear-
ance of gold or of silver, or by any means
whatever washes, cases over, or colours,
any counterfeit coin, or any piece of metal
or mixture of metal respectively, being
of a fit size and figure to be coined, and
with intent that the same shall be coined,
into false or counterfeit coin ;

Gilding,
silvering,
or other-
wise alter-
ing coin
with intent
that same
shall pass
for coin of
higher
denomina-
tion.

(c) Gilds, silvers, washes with any material in-
tended to produce the colour or appear-
ance of gold or silver, or by any means
whatsoever washes, cases over, or colours,
or files, or in any manner alters any coin
with intent that the same shall pass for a
coin other than, or of a higher denomina-
tion than, it in fact is ;

Dealing in
counter-
feit coin.

(d) Buys, sells, receives, pays, or puts off, or
offers so to do, any counterfeit current coin,
at or for a lower rate of value than the
same imports, or is apparently intended to
import ;

Importing
counter-
feit coin.

(e) Imports or receives into the United King-
dom, from beyond the seas, any counterfeit
coin, knowing the same to be counterfeit.

Whoever, without lawful authority or excuse (the
proof whereof shall lie upon the person accused):

- (a) Knowingly makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession, any machine, instrument, stamp, die, tool, pattern, mould, or other like or similar thing, or any part thereof, specially adapted or intended to be used in the manufacture of or fraudulent dealing with any false or counterfeit coin, whether current or of any foreign Prince, State, or country, or of any part thereof, knowing the same to be so adapted or intended ;
- (b) Knowingly conveys out of any of the mints of the Sovereign for the time being of these realms any machine, instrument, stamp, die, tool, pattern, mould, or other like or similar thing, now or hereafter used or employed in the coining of current coin, or any useful part thereof; or any coin, bullion, metal, or mixture of metal.

PART III.

Unlaw-
fully
making
instru-
ments for
coining.Unlaw-
fully
conveying
instru-
ments or
bullion
from the
mint.

627. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for fourteen years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever impairs, diminishes, or lightens any current coin with intent that the same, after being so impaired, diminished, or lightened, may pass as current coin.

Fraudu-
lently im-
pairing
current
coin.

628. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years,

PART III. or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, without lawful authority or excuse (the proof whereof shall lie upon the person accused) :

Exporting
counter-
feit coin.

(a) Exports or puts on board any ship, vessel, boat, or otherwise, for the purpose of being exported from the United Kingdom, any counterfeit coin, knowing the same to be so ; *

Unlawful
possession
of filings
or chip-
pings, or
gold or
silver bul-
lion, etc.

(b) Has in his custody or possession any filings or chippings of, or any gold or silver bullion, or any gold or silver in dust, solution, or otherwise, which has been, to the knowledge of such person, purchased or obtained by impairing, diminishing, or lightening any current coin.

629. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for five years, or to be imprisoned, with or without hard labour, for any period not exceeding one year :—Whoever :

Unlawful
possession
of counter-
feit
current

(a) Has in his possession three or more pieces of counterfeit current coin, knowing the same to be counterfeit, and with intent to

* The punishment for importing counterfeit current gold or silver coin into the United Kingdom from any foreign country is penal servitude for life ; importing gold or silver coin of any foreign country, seven years' penal servitude. The offence defined by this sub-clause, viz. exporting any counterfeit coin whatever with a guilty knowledge, is punishable with a *maximum* of two years' imprisonment, with or without hard labour (*vide* 24 & 25 Vict. c. 99, ss. 7, 8, and 18).

This involves some inconsistency, which would be obviated by prescribing seven years' penal servitude as the fitting punishment for the dangerous offence of criminally exporting counterfeit coin.

tender, dispose of, offer, or put off the same or any of them ;

- (b) Tenders, disposes of, offers, or puts off any counterfeit current coin, knowing it to be counterfeit, and (i.) having, at the time of doing so, in his custody or possession any other piece of counterfeit current coin ; (ii.) on the day of doing so, or on any of the ten days then next ensuing, utters any other counterfeit current coin, knowing the same to be counterfeit.

PART III.
coin with
intent to
utter same.

Uttering
current
counter-
feit coin.

630. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding one year :
—Whoever :

- (a) Tenders, disposes of, offers, or puts off any counterfeit coin, knowing the same to be so ;
- (b) With intent to defraud, tenders, disposes of, offers, or puts off, as and for current coin of the realm, any coin not being such current coin, or any medal, or piece of metal or of mixed metals, resembling the current coin for which it is so tendered, disposed of, offered, or put forward, but being of less value than such current coin ;
- (c) Has in his possession any counterfeit current coin, being fewer than three in number, knowing the same to be counterfeit, and with intent to tender, dispose of, offer, or put off ;
- (d) Defaces any current coin of the realm by

Uttering a
counterfeit
coin.

Uttering
a coin, or
medal, etc.,
resem-
bling
coin, as
and for
current
coin of the
realm.

Possession
of counter-
feit
current
coin with
intent to
utter.

Defacing

PART III.

current
coin of the
realm.

stamping thereon any names or words, whether such coin is or is not thereby diminished or lightened.

When
offence is
complete.

631. Every offence relating to coin under the provisions of this Code shall be deemed to be complete, although any coin, the subject of any offence charged, is not in a fit state to be used or dealt with, or although the counterfeiting thereof shall not be actually completed.

Offence
need not
be proved
by an
official
from the
mint.

632. Whenever it is necessary, in any trial or proceeding under this Code, to prove that any coin is false or counterfeit, or has been unlawfully impaired, diminished, or lightened, it shall not be necessary to prove that fact by the evidence of any moneyer or other officer from any mint, but it shall be sufficient to prove the same to be false or counterfeit, or to have been unlawfully impaired, diminished, or lightened, by the evidence of any credible witness.

THEFT.*

Definition
of theft.

633. Is guilty of the offence of stealing, and,

* Anything more intricate and involved than the law of England in reference to that branch which a layman, not conversant with the manifold technicalities and eccentricities of our law, would probably suppose, of all others, to be the most simple and intelligible, is not, probably, to be found in the jurisprudence of any civilized nation. The law is, no doubt, now settled, but that result has only been arrived at by a piecemeal process, extending over centuries; and to ascertain even now with precision what the law is in relation to the whole subject of larceny necessitates a research not only over the statutes which relate to it—a comparatively easy matter since the passing, in 1861, of the admirable and most skilfully drawn consolidation Acts—but over some thousands of pages of text-writers and reports, in which a large portion of the law, and its application and construction, lie entombed.

This clause will be found to embody not merely the common and

upon conviction thereof, liable to the punishment in the next but one succeeding clause enacted :—

Whoever, with intent fraudulently to deprive :

(a) Takes any property which either is or is rendered movable, belonging to any other

statute law in relation to larceny, but the statutory provisions in relation to embezzlement, obtaining money by false pretences, larceny by trustees, agents, and other persons in a fiduciary capacity. I have treated the now distinct offences of embezzlement and obtaining property by false pretences as theft, a detail apparently trifling, but which in practice will be found to simplify the law in a very important degree. At present if a judge directs a jury to convict a prisoner of embezzlement, and the offence turns out to be, in law, larceny, the conviction is bad and must be quashed. If a man is indicted for stealing an article and it turns out that he obtained it by false pretences, he cannot be convicted. The clause is likewise framed so as to avoid various technical injustices which exist under the present law, particularly in relation to fraudulent abuses of confidence, and to this extent is an extension of the existing law of larceny. Thus, at present, many acts of fraudulent misappropriation are not criminal in the eye of the law, although highly criminal in fact. For example, the acting treasurer of a church missionary society, whose duty it is to receive moneys on account of the society, and, upon receipt, deposit or invest them, converts them to his own use. This was held not to be theft (*vide* Reg. v. Garrett, 8 Cox, C. C. 368). The treasurer of a money club converted to his own use moneys, the property of the club, which were in his possession as treasurer at the end of the year, as the result of the year's business, and which it was his duty to divide amongst the members. This also was held not to be larceny (*vide* Reg. v. Hassall, 1 L. and C. 58). And generally a man to whom money is entrusted as a bailee, who is under an obligation to return the equivalent but not the specific thing deposited, and who appropriates the same to his own use, meaning to defraud the person who has so entrusted him, cannot be reached by the criminal law. A. entrusts a cheque to B. to get the same cashed. B. does so, and fraudulently appropriates the proceeds to his own use. This also is not theft, upon the ground that the conversion of the cheque into cash was authorized, and that the proceeds, never having been, in law, the property of A., cannot be deemed to have been stolen from him (Reg. v. Sullens, 1 Moo. & C. C. 129). An agent entrusted with money or a valuable security, to collect the money due thereon, and in either case to pay or apply the money or proceeds in a particular manner, in neither case commits any criminal offence by appropriating to his own use the money or proceeds of the security entrusted to or collected by him in fraud of his principal, unless, with the money or valuable security, he received directions in writing as to the mode in which he should apply the money

PART III.

person, either wholly or in part, without his consent ;

- (b) Moves, cuts, severs, or otherwise renders or begins to render movable, in order to take, any such property without the owner's consent ;
- (c) Kills any living creature (other than one wild by nature and in the enjoyment of its natural liberty) in order unlawfully to appropriate the carcass, skin, plumage, or any part of the creature so killed ;
- (d) Takes or applies any property, or any part thereof, or the proceeds of any property, or any part of the proceeds thereof, entrusted to, or in the possession, custody, or control of, the accused, either solely or jointly with any other person, for delivery to, or otherwise for the use or benefit, future or immediate, of, any other person whatsoever (whether such person be in existence or not), either wholly or in part, and whether or not the same has at any time been in the possession of the person so intended to be deprived, without the consent of such last-mentioned person, or with his consent, if such consent be obtained from him by fraud. It is im-

or the proceeds of the security (*vide* Reg. v. Tatlock, 2 Q. B. D., 157, and Reg. v. Cooper, 43 L. J. (M. C.) 189).

It would be easy to multiply these cases, but those cited may be taken as typical ones. I have acted upon the principle that the law ought to be made strong enough to reach and punish each of this class of cases ; but the clause will, I venture to think, be found, at the same time, not to go beyond acts which clearly ought, in law, to be punishable as criminal conversion.

material whether or not the person proceeded against was under an obligation to apply, deliver, account for, or dispose of any specific property, or some equivalent. PART III.

- (e) Being entrusted, either solely or jointly with any other person, with any power of attorney or authority for the sale, mortgage, or otherwise dealing with any property, deals with such property, or applies the proceeds arising from any sale, mortgage, or other dealing therewith, in a manner, or to any purpose, other than that for which he was entrusted with such power of attorney or authority ;
- (f) By any wilful false pretence or representation that any fact exists or has existed, or by any wilful false pretence or representation of anything to happen in the future, which the person making the same knows at the time of making will not happen, induces any person to deliver or transfer any property, or to enter into some contract or engagement in consequence of which any property is delivered or transferred, to the person making such pretence or representation, or to any other person. Such pretence or representation may be either by words, or by any conduct intended and calculated to deceive.

634. Whoever, for any fraudulent purpose, destroys, cancels, obliterates, or conceals the whole or any part of any valuable security, is guilty of the same Destroy-
ing, etc.,
a valuable
security.

PART III. offence and liable to the same punishment as if he had stolen the same.

Punish-
ment of
theft.

635. Whoever is convicted of stealing shall be liable to the following punishments respectively :—

Stealing
wills.

(i.) To penal servitude for life, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, if the property which such person is convicted of stealing is a will, codicil, or other testamentary disposition whatsoever, stolen either during the life of the testator or after his death.

(ii.) To penal servitude for twenty years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, if the property which such person is convicted of stealing is :—

Stealing
property
of the
value of
£1000 or
upwards.
Stealing
a post
letter-bag.

(a) Of the value of one thousand pounds or upwards ;

(b) A bag containing post letters or packets from a post-office, or from any officer of the post-office, or from any conveyance by which letters or packets are transmitted by land or water under the authority of the Postmaster-General, or any person lawfully exercising the office of Postmaster-General for the time being, or from any person having charge of the same under such authority.

(iii.) To penal servitude for fourteen years, or for any lesser term for which penal servitude may be law-

fully awarded, or to be imprisoned, with or without PART III.
 hard labour, for any period not exceeding two years, if —
 the person convicted is :—

(a) An officer or servant in the employment of Stealing by officers or servants of the Bank of England.
 the governor and company of the Bank of
 England, and the property which such
 person is convicted of stealing is a bond,
 note, bill, dividend warrant, or warrant
 for the payment of any annuity, interest,
 or money, or any security, money, or other
 effects, and which property is of a value
 less than one thousand pounds, lodged or
 deposited with the said governor and com-
 pany, and entrusted to such person as such
 officer or servant ; *

(b) Employed in the public service of the Crown, Stealing by persons employed in the public service of the Crown, or by constables or police officers.
 or as a constable, officer, or other person
 employed in the police of any county, city,
 borough, or district whatsoever, and the
 property which such person is convicted of
 stealing is property which was entrusted
 to him, or in his possession or control, by
 virtue of such employment, and is of less
 value than one thousand pounds.

(iv.) To penal servitude for ten years, or for any Stealing

* This offence is now punishable with penal servitude for life (24 & 25 Vict. c. 96, s. 73). It is a question whether, at the present day, there should be any distinction in punishment between offences committed by officers and servants of the Bank of England and of other banking establishments. If any such distinction ought to prevail, I submit that officers and others holding any appointment or situation in any savings bank ought to be subject, as regards thefts, to the same punishment, upon conviction, as officers or servants of the Bank of England, persons in the service of the Crown, and others whose position is considered to be an aggravation of the offence.

PART III. lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, if the property which such person is convicted of stealing is of the value of one hundred pounds or upwards, but of less value than one thousand pounds.

property
of value
of £100,
and less
than
£1000.

Theft
punish-
able with
seven
years'
penal ser-
vitude.

(v.) To penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years, if the property which such person is convicted of stealing, being of a value less than one hundred pounds :—

- (a) Is a post letter or packet, or telegraphic message, or any property from or out of any such letter or packet ;
- (b) Is of the value of five pounds or upwards ;
- (c) Is a horse, mare, gelding, colt, filly, ass, mule, bull, cow, heifer, calf, ram, ewe, sheep, or lamb ;
- (d) Is stolen from any dwelling-house, or from the person of another ;
- (e) Consists of any goods of the value of not less than twenty shillings, placed or exposed during any stage, process, or progress of manufacture, in any building, field, or other place ;*
- (f) Belongs to or was in the possession of his employer or master, in any case in which the person convicted is a clerk or servant, or employed for the purpose, or in the capacity of a clerk or servant to such employer or master ;

* This offence is at present punishable with *fourteen* years' penal servitude—a severity which there is nothing to justify.

(g) Is part of any ship or vessel in distress, or wrecked, stranded, or cast on shore; or consists of any goods, merchandise, or articles of any kind in or belonging to any such ship or vessel; PART III.

(h) Is stolen from any vessel, barge, or boat whatsoever in any haven, or in any port of entry or discharge, or upon any navigable river or canal, or in any creek or basin belonging to or communicating with any such haven, port, river, or canal, or from any dock, wharf, or quay adjacent to any such haven, port, river, canal, creek, or basin.

(vi.) To penal servitude for five years, or to be imprisoned, with or without hard labour, for any period not exceeding one year :— Theft punishable with five years' penal servitude.

In any case in which any person is convicted of stealing anything for which no other or greater punishment is provided by this clause.

636. Whenever any person, in committing any offence against clause 633, does any damage to any property, the value of the property shall, for the purpose of determining the punishment to which such person is liable upon conviction, be deemed to be either the value of the property stolen or the amount of the damage so done, whichever be the greater. Value of property where damage done in order to commit theft.

CRIMINALLY RECEIVING PROPERTY OR TAKING REWARDS.

637. Is guilty of an offence, and liable, upon conviction thereof, to the same punishment as if he had Receiving with a guilty knowledge

PART III. been convicted of the offence by which the property hereinafter mentioned was taken, appropriated, or obtained :—

Whoever, without lawful excuse, receives into his possession or control, or negotiates or bargains for the transfer or delivery to himself or to any other person of, any property which has been taken, appropriated, or obtained so as to amount to any offence against this Code, or is the proceed of any property which has been so taken, appropriated or obtained, knowing that such property was so taken, appropriated, or obtained, or is such proceed as aforesaid.

Unlaw-
fully tak-
ing reward
for helping
any person
to recover
property
criminally
obtained.

638. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, without lawful excuse, takes or demands any money, money's worth, or reward whatever, directly or indirectly, under pretence or on account of helping any person to recover any property which has been taken, appropriated, or obtained so as to amount to an offence against this Code, unless the person so taking or demanding has used or uses all due diligence to cause the offender to be apprehended and brought to trial for his offence: provided that no person shall be liable to any greater punishment, upon conviction of this offence, than he would be liable to if he had been convicted of the offence by which such property was taken, appropriated, or obtained.

UNLAWFUL POSSESSION OF PROPERTY.

PART III.

639. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, with or without hard labour, for any period not exceeding one year :—

Definition
and pun-
ishment.

Whoever is found in the possession of any movable property, whether in a public place or otherwise wheresoever, or knowingly has upon his premises, or at any place where he resides or is, any such property, which has been, or which is reasonably believed to have been, taken, acquired, or obtained in any way or by any means which is declared to be an offence against this Code; and does not reasonably account for, or show that he came lawfully or without guilty knowledge by the same.*

Nothing in this clause contained shall be deemed or taken to prevent or affect the apprehension, trial, conviction, or punishment of any person who commits any offence, in respect of any property, which is otherwise specifically provided for by this Code; but no person who has been convicted or acquitted for an offence against this clause shall be afterwards tried for any other offence on the same facts.

Proviso.

FRAUDULENT PLEDGING.

640. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, with or without hard labour, for any period not exceeding one year :—

Definition
and pun-
ishment.

Whoever, being entrusted with, or in possession

* This offence is at present punishable only upon summary conviction.

PART III. of, either solely or jointly with any other person, for the purpose of sale, or for any other purpose whatsoever, any property, whether received immediately from the owner, or however otherwise obtained, knowingly, in violation of good faith, and contrary to the purpose for which the same was entrusted, or without the authority of the person to whom the same belongs, for the benefit of himself or any person whatever, other than such owner, makes, or promises or agrees, either verbally or in writing, to make, any consignment or deposit, transfer or delivery, of any such property, or of the proceeds thereof, or any part thereof, as and by way of pledge, lien, or security.

Saving as
to act done
in good
faith
under
a trust, or
by a mort-
gagee or
person
claiming a
lien, etc.,
to the
extent of
any money
due.

Provided that no person commits an offence against this clause by reason only of any act done in good faith, in or under any instrument whatever, in relation to property comprised in any trust; or by any mortgagee of any real or personal property, in relation to any property comprised in or affected by his mortgage, to the extent of any money due thereon; or to any act done in good faith by any other person, in respect of any property upon which he has, or in good faith claims to have, any lien, right, or demand, to an extent not greater than is reasonably necessary to satisfy such lien, right, or demand; or by any person who has accepted any bill of exchange, drawn by or on account of the owner of such property, to an extent not greater than the amount of such bill.

Proviso. Nothing in this clause contained shall be deemed or taken to prevent or affect the apprehension, trial, conviction, or punishment of any person who com-

mits any offence, in respect of any property, which is otherwise specifically provided for by this Code ; but no person who has been convicted or acquitted for an offence against this clause shall be afterwards tried for any other offence on the same facts.

PART III.

OBTAINING EXECUTION, ETC., OF VALUABLE SECURITIES.

641. Is guilty of an offence, and liable, upon conviction thereof, to the same punishment as if he had stolen the hereinafter-mentioned valuable security :—

Definition
and punishment.

Whoever, with intent to defraud or injure any other person, by any false pretence, causes or induces any person to execute, make, accept, endorse, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, or of any company, firm, or co-partnership, or the seal of any body corporate, company, or society, upon any paper or parchment, in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security.

FRAUDS BY OFFICERS, ETC., OF PUBLIC COMPANIES.

642. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

(i.) Whoever, being a director, public officer, or Directors,

PART III.

etc., fraudulently appropriating property, or making or circulating false accounts.

Destroying or falsifying books, etc., or making false entries.

manager of any body corporate or public company, (a) receives or possesses himself, as such, of any of the property of such body corporate or public company,* and, with intent to defraud, omits to make, or cause or direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company; (b) makes, circulates, or publishes, or concurs in making, circulating, or publishing, any statement or account which he knows to be false in any material particular, with intent to deceive or defraud any person whatsoever, or to induce any person whatsoever to become a shareholder or partner in such body corporate or public company, or to entrust or advance any property to, [or give credit to,] † or enter into any security for the benefit of, such body corporate or public company.

(ii.) Whoever, being a director, manager, public officer, or member of any body corporate or public company, with intent to defraud, (a) destroys, alters, mutilates, or falsifies any book, paper, writing, or valuable security belonging to such body

* The section upon which this sub-clause is framed contains the words "otherwise than in payment of a just debt or demand." The existence of this, however, ought not to release a person occupying the position of director, officer, or manager, from making a proper entry in the books and accounts, although it might properly be relevant to the question whether the omission was made with any intent to defraud (*vide* 24 & 25 Vict. c. 96, s. 82).

† The words within brackets are new, not being contained in s. 84 of 24 & 25 Vict. c. 96, upon which this sub-clause is based.

corporate or public company; (b) makes PART III.
or concurs in the making of any false
entry, or omits or concurs in omitting any
material particular in any book of account
or other document.

- (iii.) Whoever, being a promoter, contractor, Pro-
motors,
etc., pub-
lishing
false pro-
spectus.
or other person interested in the estab-
lishment of any body corporate or public
company, or the floating of any public
loan, or being a trustee, director, manager,
secretary, auditor, solicitor, broker, or
other officer of any body corporate or
public company, either existing or intended
to be formed, makes, circulates, or pub-
lishes, or concurs in making, circulating,
or publishing, any prospectus, statement,
or account which he knows to be false or
fraudulent in any material particular, with
intent to induce any person whatsoever,
whether ascertained or not, to become a
shareholder, subscriber, partner, or joint
adventurer therein or thereto, or to en-
trust or advance any property to, or give
credit to, or enter into any security for the
benefit of, such body corporate or public
company.*
- (iv.) Whoever, being a director, officer, liquida- Destroy-
ing or fal-
sifying
books, etc.,
tor, or contributory of, or being otherwise
employed or engaged in the winding up

* This clause is new, and is expressly aimed at suppressing in future those frauds in connection with the issuing of fraudulent prospectuses of public companies and loans, which have been so fertile of ruin, and have become so great a scandal in recent years.

PART III.

of a com-
pany in
liquida-
tion.

of, any public company, destroys, mutilates, alters, or falsifies any book, paper, writing, or security ; or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account, or other book or document belonging to the company with intent to defraud or deceive any person.*

FALSIFICATION OF ACCOUNTS BY CLERKS OR SERVANTS.

Definition
and pun-
ishment.

643. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, being a clerk, officer, or servant, or employed or acting in the capacity of a clerk, officer, or servant, wilfully and with intent to defraud :

- (a) Alters, mutilates, or falsifies any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer ;
- (b) Makes or concurs in making any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in, any such book, paper, writing, security, or account.

* The punishment for this offence is, at present, imprisonment for any term not exceeding two years (25 & 26 Vict. c. 89, s. 166).

CONSPIRACY TO DEFRAUD.

PART III.

644. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Definition
and punishment.

Whoever conspires with any other person to defraud, either the public generally, or any person, of any property, in such a way or by such means as, if done by a single person, would amount to an offence against this Code.*

CHEATING.

645. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for five years, or to be imprisoned, with or without hard labour, for any period not exceeding one year :—
Whoever :

- (a) Knowingly sells anything, the price of or consideration for which is regulated or determined by weight or measure, by any false scales, weight, or measure, with intent to defraud ;
- (b) Defrauds any person by any deceitful practice, knowingly performed with that intent, and which is of such a nature as to be calculated to defraud any considerable number of the public individually ;
- (c) Commits any deceitful practice, falsehood, or other fraudulent act, intending thereby to affect the public market price of any funds, stock, share, or merchandise ;

Cheating
by means
of false
scales,
weights,
or mea-
sures.

Common
cheating.

Fraudu-
lently
affecting
prices in
any public
market.

* This offence cannot at present be visited with penal servitude.

PART III.

Cheating
at play.

- (d) Knowingly, by any fraud, or fraudulent device, or ill practice in or at any game of chance or skill, or mixed game of chance and skill, or in bearing a part in the stakes, wagers, or adventures, or in betting on the sides or hands of those who play, or in wagering on the event of any game, sport, pastime, or exercise, obtains or endeavours to obtain, for himself or any other person, as or by way of winnings from any person, any property.

FRAUDULENT CONCEALMENT AND FALSIFICATION
OF TITLE.

646. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Frauds
against
the Trans-
fer of Land
Act.

- (i.) Whoever, being either principal or agent, in any proceeding to obtain the registration of any land, or any land certificate or certificate of title, or otherwise in any transaction relating to land which is or is purposed to be put upon the registry, under or by virtue of any statute either now or hereafter for the time being in force, knowingly and with intent to deceive, (a) makes, or assists or joins in, or is privy to the making of, any material false

statement or representation; (b) suppresses, conceals, or assists or joins in, or is privy to the suppressing, withholding, or concealing from any judge, or from the registrar, or any person employed by or assisting the registrar, any material document, fact, or matter of information. PART III.

Every act or thing done or obtained by means of any such fraud, falsehood, suppression, or concealment shall be null and void to all intents and purposes, except as against a purchaser for valuable consideration without notice thereof.

(ii.) Whoever fraudulently procures, or assists in fraudulently procuring, or is privy to the fraudulent procurement, (a) of any order of the Chancery Division of the High Court of Justice in relation to registered land; (b) of any entry on the register of any caveat or notice of a charge, or of the erasure from, or alteration on, the register of any caveat or notice of charge.

Any such order, and any act consequent on such order, and any such entry, erasure, or alteration, so procured or made by fraud, shall be void as between all parties privy to such fraud.

(iii.) Whoever, in any proceeding before the Court exercising jurisdiction under the "Declaration of Title Act, 1862," acting either as principal or agent, knowingly and with intent to deceive, (a) makes, or assists or joins in, or is privy to the making of, any material false statement or representation: (b) suppresses, conceals, Frauds against the Declaration of Title Act.

PART III.

Concealment of title, or falsification of pedigree by vendor or mortgagor, or his solicitor or agent.

or assists or joins in, or is privy to the suppressing, withholding, or concealing from the Court of, any material document, fact, or matter of information.*

- (iv.) Whoever, being a vendor or mortgagor of land, or of any chattels real or personal, or any chose in action conveyed or assigned to a purchaser or mortgagee, or the solicitor or agent of any such vendor or mortgagor, conceals from such purchaser or mortgagee, in order to induce him to accept the title offered or produced to him, and with intent to defraud, any settlement, deed, will, or any instrument material to the title, or any incumbrance, or falsifies any pedigree on which the title does or may depend.†

Saving as to civil rights.

647. No proceeding or conviction for any of the offences in the last preceding clause contained shall affect any remedy which any person aggrieved by such act may be entitled to, either at law or in equity, against the person who has committed such

* All the offences comprised in sub-clauses (i.), (ii.), (iii.), are at present punishable with a *maximum* of *three* years' imprisonment, with or without hard labour (*vide* 25 & 26 Vict. c. 53, ss. 105, 138, 139; and 25 & 26 Vict. c. 67, s. 44).

† This offence is not now punishable with penal servitude, but, from its extreme gravity, clearly ought to be. Moreover, the principal section from which this clause is taken (22 & 23 Vict. c. 25, s. 24, amended by 23 & 24 Vict. c. 38, s. 8, so as to include a mortgagee as well as purchaser) prohibits a prosecution being instituted without the sanction of the Attorney-General. This proviso may have been necessary at the time of the passing of the Act, probably with a view to disarming opposition to the clause; but there would appear to be now no reason why the practice in relation to this offence should not be assimilated to the rest of the criminal law.

act. And every person who commits either of the acts in sub-section iv. of the last preceding clause shall, in addition to any punishment to which he is liable for such offence, be also liable to an action for damages at the suit of the purchaser or mortgagee, or those claiming under the purchaser or mortgagee, for any loss sustained by them or either of them, in consequence of the settlement, deed, will, or instrument or incumbrance concealed, or of any claim made by any person under the falsified pedigree, and whose right was concealed by such falsification; and in estimating such damages, where the estate is recovered from such purchaser or mortgagee, or from those claiming under such purchaser or mortgagee, regard shall be had to any expenditure by them or either of them in improvements on the land.*

648. In the construction of the two last preceding clauses the term "land" shall be taken to include all tenements and hereditaments, and any part or share of an estate or interest in or out of any tenement or hereditament, of what tenure or kind soever; and the term "encumbrance" shall be taken to include every instrument by virtue whereof land is in any manner conveyed, assigned, pledged, or charged, or agreed so to be, as security for the repayment of money or money's worth lent, and to be reconveyed, reassigned, or released on satisfaction of

Construction of terms
"land,"
"encumbrance,"
"mortgagor,"
and "mortgagee" in two last preceding clauses.

* The latter part of this clause may possibly appear to some incongruous in a criminal Code. It forms, however, part of the section from which the preceding sub-clause, constituting the offence of concealing anything material to the title, is taken (22 & 23 Vict. c. 35, s. 24¹; and I have, on the whole, thought it better, *ex superabundanti cautelâ*, to include it here.

PART III. the debt; and the term “mortgagor” shall be taken to include every person by whom such conveyance, assignment, pledge, or charge as aforesaid shall be made, or agreed to be made; and the term “mortgagee” shall be taken to include every person to whom or in whose favour any such conveyance, assignment, pledge, or charge as aforesaid is made or transferred, or agreed so to be.

FRAUDULENT DEBTORS.

Defini-
tions and
punish-
ment.

Fraudu-
lent acts
by persons
adjudi-
cated
bankrupt,
or whose
affairs are
liquidated
by
arrange-
ment.

649. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding two years:—

(i.) Whoever, having been adjudged bankrupt, or whose affairs are liquidated by arrangement under any law relating to bankruptcy for the time being in force:

(a) Does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real and personal; and how, and to whom, and for what consideration, and when he disposed of any part thereof which he is reasonably called upon to account for the disposition of,* except

* The first sub-section of s. 11 of “The Debtors’ Act, 1869,” leaves it entirely indefinite as to what property the bankrupt or debtor is to account for the disposal of. It is not surprising, therefore, that various interpretations have been given to it, and that whilst one Court has held that the bankrupt or debtor must account for the disposition of property of which he was possessed twenty years before, another has held that, by analogy with other enactments, the trustee is not entitled to go back beyond the period whence his own title is derived. Neither construction, probably, works complete justice, and hence the amendment I have introduced.

such part thereof as may reasonably be taken to have been disposed of in the ordinary way of his trade (if any), or to have been laid out in the ordinary expenses of his family or household, unless he satisfies the jury that he had no intent to defraud ; *

PART III.

- (b) Does not deliver up to such trustee, or as such trustee by writing directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless he satisfies the jury that he had no intent to defraud ;
- (c) Does not deliver up to such trustee, or as such trustee in writing directs, all books, documents, papers, and writings in his custody or under his control, relating to his property or affairs, unless he satisfies the jury that he had no intent to defraud ;
- (d) Knowingly makes any material omission in any statement relating to his affairs, unless he satisfies the jury that he had no intent to defraud ;
- (e) Knowing or believing that a false debt has been proved by any person under the

* The qualifying words used throughout in "The Debtors' Act, 1869," are, "Unless the jury is satisfied that he had no intent to defraud." This left it open to argument as to on which side lay the *onus* of proving the intent to defraud, until it was held that the act constituting the offence being proved, it lay upon the defendant to prove affirmatively, to the satisfaction of the jury, that he had no intent to defraud (*Reg. v. Cherry*, 12 Cox, C. C. 32).

PART III.

bankruptcy or liquidation, wilfully fails for the period of a month to inform such trustee as aforesaid thereof.

Fraudulent acts by a debtor after the presentation against him of a bankruptcy petition, or the commencement of his liquidation, or within four months thereof.

(ii.) Whoever, after the presentation of a bankruptcy petition against him, or the commencement of his liquidation, or within four months next before such presentation or commencement :

- (a) Conceals any part of his property, to the value of ten pounds or upwards, or conceals any debt due to or from him, unless he satisfies the jury that he had no intent to defraud ;
- (b) Fraudulently removes any part of his property, of the value of ten pounds or upwards ;
- (c) Conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or document affecting or relating to his property or affairs, unless he satisfies the jury that he had no intent to fraudulently conceal the state of his affairs, or to defeat the law ;
- (d) Makes, or is privy to the making of, any false entry in any book or document affecting or relating to his property or affairs, unless he satisfies the jury that he had no intent to fraudulently conceal the state of his affairs, or to defeat the law ;
- (e) Fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making

any omission, in any document affecting PART III.
or relating to his property or affairs ;

(iii.) Whoever, after the presentation of a bankruptcy petition against him, or the commencement of his liquidation, wilfully withholds or prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless he satisfies the jury that he had no intent to conceal the state of his affairs, or to defeat the law.

(iv.) Whoever, after the presentation of a bankruptcy petition against him, or the commencement of his liquidation, or at any meeting of his creditors within four months next before such presentation or commencement, attempts to account for any part of his property by fictitious losses or expenses.

(v.) Whoever, within four months next before the presentation of a bankruptcy petition against him, or the commencement of his liquidation :

- (a) By any wilfully false representation or other fraud has obtained any property on credit, and has not paid for the same ;
- (b) Being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless he satisfies the jury that he had no intent to defraud ;
- (c) Being a trader, pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for,

PART III.

unless he satisfies the jury that he had no intent to defraud ;

(vi.) Whoever is guilty of any wilfully false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to any resolution or agreement with reference to his affairs, or his bankruptcy or liquidation.

Making a false claim, etc., in any bankruptcy, liquidation, or composition with creditors.

650. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any term not exceeding one year :—

Whoever, in any bankruptcy, or liquidation by arrangement, or composition with creditors, in pursuance of the law relating to bankruptcy for the time being in force, wilfully, and with intent to defraud, makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular.

Debtor quitting, etc., England, and fraudulently dealing with property divisible amongst his creditors.

651. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any term not exceeding two years :—

Whoever, being adjudged bankrupt, or whose affairs are liquidated by arrangement under the law relating to bankruptcy for the time being, after the presentation of a bankruptcy petition against him, or the commencement of his liquidation, or within four months before such presentation or presentment, quits England and takes with him, or attempts or makes preparation for quitting England and for taking with him, any part of his property, to the amount of twenty pounds or up-

wards, which would, upon his being adjudged a PART III. bankrupt, or having his affairs liquidated by arrangement, by law be divisible amongst his creditors, unless he satisfies the jury that he had no intent to defraud.

652. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding one year :—
Whoever :

- (a) In incurring any debt or liability, obtains credit by any wilful false pretence or representation that any fact exists or has existed, or by means of any other fraud ; Obtaining credit by fraud.
- (b) With intent to defraud his creditors, or any of them, makes or causes to be made any gift, delivery, or transfer of, or any charge on his property or any part thereof ; Fraudulent assignment of property.
- (c) With intent to defraud his creditors, conceals or removes any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him. Fraudulent removal of property.

BREAKING PRISON AND ESCAPE FROM LAWFUL CUSTODY.

653. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for life, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard Definition and punishment of breaking prison,

PART III. labour, for any period not exceeding two years :—

voluntary
escape or
rescue, by
or of
person in
custody or
detained
for offence
punish-
able with
death or
penal
servitude.

Whoever :

- (a) By actual force, breaks any prison, either from within or without, with intent to set at liberty either himself or any person lawfully confined or detained therein, whether upon accusation or in consequence of having been convicted of any criminal offence punishable with death or penal servitude ;
- (b) Having any person lawfully in custody, whether upon accusation or after conviction for any criminal offence punishable with death or penal servitude, intentionally allows such person to escape, or aids him in escaping or attempting to escape therefrom ;
- (c) Rescues, or attempts to rescue, any such person from lawful custody.

The like
in the case
of offences
otherwise
punish-
able.

654. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any term not exceeding two years :—Whoever :

- (a) By actual force, breaks any prison, either from within or without, with intent to set at liberty either himself or any person lawfully confined or detained therein, whether upon accusation or in consequence of having been convicted of any criminal offence punishable otherwise than with death or penal servitude ;

- (b) Having any person lawfully in custody, PART III.
 whether upon accusation or after conviction, for any such criminal offence as last aforesaid, intentionally allows such person to escape, or aids him in escaping or attempting to escape therefrom ;
- (c) Rescues, or attempts to rescue, any such person from lawful custody.

655. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Persons sentenced to penal servitude, or transported being at large.

Whoever, having been sentenced or ordered to be transported or kept in penal servitude, or having agreed to transport himself on certain conditions, for any term, is afterwards at large, without lawful excuse, within any part of the Sovereign's dominions, before the expiration of the term for which he was sentenced or ordered to be transported or kept in penal servitude, or agreed to transport himself.*

656. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any term not exceeding two years :—Whoever :

Escaping, or assisting any person, to escape, from lawful custody.

- (a) Being in lawful custody, whether or not at the time confined in any prison, either upon accusation or in consequence

* Any person convicted of this offence is at present liable to penal servitude for life—a punishment which is indiscriminate in its severity (*vide* 5 Geo. 4, c. 84, s. 22, and 4 & 5 Will. 4, c. 67).

PART III.

of having been convicted of any criminal offence, escapes therefrom ;

- (b) Being any one other than a peace officer having such person in his lawful custody, or the keeper or any official of any prison in which such person is lawfully detained, aids any such person to escape from such custody ; or with intent to aid or facilitate the escape of any prisoner, conveys or causes to be conveyed into any prison any instrument, dress, disguise, or anything whatsoever intended and reasonably calculated to aid or facilitate such escape.

Limita-
tion of
punish-
ment.

Provided that no person convicted of any offence under this clause shall be liable to any greater punishment therefor than the maximum punishment by law authorized in the case of a conviction for the offence for the commission, or alleged commission, of which the person escaping or whose escape is aided or facilitated, or attempted so to be, was in custody.*

* By the present law different modes of escapes are dealt with in different ways, and the law upon the subject is highly technical, artificial, and inequitable. Thus, to give two illustrations: A., who is lawfully confined in prison upon a charge of felony, climbs over the prison wall and escapes. He is guilty merely of a misdemeanour, and liable to a term of imprisonment, with or without hard labour (*vide* 2 Hawk. P. C., c. 182 ; and 14 & 15 Vict. c. 100, s. 29). B does precisely the same act as A., except that on the top of the wall which B. climbs are loose bricks, which happen to be so placed as to fall if disturbed. B., in climbing the wall, accidentally disturbs and throws down one of them. B. is guilty of felony (*vide* *Rex v. Haswell*, Russ. and Ryan, 458), and liable to seven years' penal servitude, and to be once, twice, or thrice whipped. The proviso contained in this section is designed as a fair and equitable method of apportioning punishment in the case of escapes from custody upon accusation or conviction of criminal offences. And, indeed, it may be even said to be in accordance with the spirit of the ancient statute

657. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment as a misdemeanant for any term not exceeding one year :—

PART III.

Negligently permitting escape.

Whoever, by neglecting to perform any legal duty, permits, however unintentionally, any person in his lawful custody, either accused or convicted of any criminal offence, to escape therefrom : provided that no person shall be deemed to commit an offence against this section if, before being prosecuted for the same, he retakes or causes to be retaken the person who has escaped from his custody.

658. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—Whoever :

Assisting prisoners of war to escape.

- (a) Knowingly assists any alien enemy of the Sovereign, being a prisoner of war, detained in any prison or place of confinement, to escape therefrom ;
- (b) Knowingly assists any such person, who is suffered to be at large on his parole, to escape out of the Sovereign's dominions ;
- (c) Owing allegiance to the Sovereign, after any such person as aforesaid has quitted the coast of any part of the Sovereign's

De frangentibus prisonam (1 Edw. 2, st. 2, c. 1), which declares that "concerning prisoners which break prison, our lord the king willeth and commandeth, that none that henceforth breaketh prison shall have judgment of life or member for breaking of prison only, except the cause for which he was taken or imprisoned did require such judgment, if he had been convict thereupon according to the law and custom of the realm, albeit in times past it hath been used otherwise."

PART III.

dominions in such his escape, knowingly upon the high seas aids or assists such person in his escape towards any other country or place.

LIBEL.

Definition
of a de-
famatory
libel, and
punish-
ment for
publishing
same.

659. Is guilty of the offence of publishing a defamatory libel, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding two years, if he published the same knowing it to be false; and otherwise to be imprisoned as a misdemeanant for any period not exceeding one year :—

Whoever, knowing the contents and meaning, exhibits, or causes to be exhibited, read, seen, or received by any person whatsoever, whether the person libelled or otherwise, any matter, word, or sign, written, printed, marked, or otherwise denoted upon any substance, or in any way rendered visible, or any object, either of which conveys or expresses anything, either in express terms, or by irony, innuendo, or insinuation, and whether or not true in fact, either intending to insult or provoke to wrath the person to whom the same is exhibited or caused to be received, or which is calculated directly or indirectly to expose to hatred, ridicule, or contempt, and thereby injure the reputation of :

(a) Any person ;

(b) Any member of any, or any body or community so limited in number as that the thing caused to be exhibited or received is obviously applicable to particular individuals.

Provided that no one is guilty of an offence under this clause who publishes, or causes to be published, anything in such clause mentioned : PART III.
What constitutes a justification or defence for the publication of matter charged as a libel.

- (a) Which is exhibited, or read, in any proceeding held before or under the authority of any Court of justice; or in any inquiry held under the authority of the Sovereign, of either House of Parliament, any department of State, or any statute now or hereafter for the time being in force, and which is relevant to, or used in good faith in the course of, such proceeding or inquiry. Publication in the course of a judicial proceeding or authorized inquiry.
- (b) Which is contained in a petition actually presented to either House of Parliament; or in a petition which is in good faith intended to be presented to, and would be receivable by, either House of Parliament, according to the rules relating to petitions for the time being in force; or is contained in any document published by order or under the authority of either House of Parliament; or is an extract or abstract made in good faith of any such document. Petitions to Parliament and publications by order or authority of either House.
- (c) Which is a substantially fair and accurate report, either complete or condensed, of any of the proceedings in either House of Parliament; or of any proceeding in a Court of justice; or a fair comment, intended in good faith, upon any of such proceedings. Fair reports of, and comments on, proceedings in Parliament or a Court of justice.
- (d) Which is in fact true, and in the particular manner in which the same was published Publication of matter

PART III.

true in
fact.

was, as a fact, for the public advantage,
and was intended with that object.

Provided that such defence shall not be permitted
to be raised in any trial, unless it is pleaded in the
manner prescribed by sub-section (c) of clause 314 of
this Code.

Privileged
communi-
cations.

(e) Which, whether or not true in fact, he
honestly and on reasonable grounds be-
lieved so to be, and that the party to
whom the matter alleged to be defamatory
was published ought reasonably to have
been informed thereof; or that he had
reasonable grounds for believing that such
person ought to be so informed, and that
he acted without any ill-will.

Publica-
tions made
in self-
justifica-
tion or
defence.

(f) Which, whether or not true in fact, he
shows he honestly and on reasonable
grounds believed to be true, and published
in good faith by way of self-justification
or defence, or for the genuine purpose of
obtaining redress for an injury honestly
believed to have been sustained; and, in
either case, that the publication in the
particular manner in which the same was
published was reasonably necessary for
one or other of the said purposes.

Fair dis-
cussion of
matters of
public
interest.

(g) Which, whether or not true in fact, he
honestly and on reasonable grounds be-
lieved to be true, and published in good
faith, in the course and for the purpose of
discussing a subject of public interest.

Fair com-
ment upon
persons

(h) Which, whether or not true, is a comment
expressing the real opinion of the author,

formed upon fair grounds and with reasonable care, upon any person or thing submitted to public criticism, or who or which is ordinarily, or fairly, the subject of public criticism.

PART III.

and things submitted to public criticism.

660. Every person who is the proprietor, either wholly or in part, of any periodical publication is responsible for any defamatory libel published therein, jointly with every other person who actually publishes or causes such libel to be published, unless he proves that such libel was published without his knowledge, and without his having given any authority, either general or otherwise, to publish that or other defamatory matter in such publication, or any issue thereof.

Proprietor of a periodical publication not criminally liable for defamatory matter published therein, which he proves was inserted without his knowledge and authority.

661. A general authority given by any such proprietor to any person to manage, or exercise his discretion in the conduct of, any periodical publication is not an authority to publish therein defamatory matter within the meaning of this Code, unless the publication of such matter is shown to have been expressly intended by such general authority, or unless such proprietor has expressly concurred in the publication of defamatory matter in any issue of such periodical publication.*

What constitutes authority.

662. No one commits any offence by disposing of or exposing for sale in the ordinary course of trade

Protection to persons selling

* I believe this clause fairly expresses the general common-sense feeling upon the question of what ought to be the limit of criminal responsibility of a person for the publication of a libel in a periodical of which he is the proprietor, but the conduct and management of which he has entrusted to another. For the existing law upon the subject, *vide* 6 and 7 Vict. c. 96, s. 7.

PART III. any book, periodical publication, or other matter
 books and other pub- printed or otherwise rendered legible, unless it is
 lications proved that he knew that the same contained a
 which con- defamatory libel, or, in the case of a periodical publi-
 tain cation, that he knew that the issues of such periodical
 defama- publication habitually contained defamatory libel.
 tory libel.

When
 other
 libels may
 be given
 in evidence
 upon the
 trial of an
 Act of
 Accusation
 for a
 defama-
 tory libel.

663. Upon the trial of any person for publishing or procuring to be published any defamatory libel, after evidence has been given to show that the matter complained of, being libellous in fact, was published or procured to be published by the accused, any other defamatory matter published or procured to be published by the accused, of and concerning the same prosecutor, either previously or subsequently, may be given in evidence, either as explanatory of the meaning of the particular libel upon which the Act of Accusation is founded, or as evidence of the state of mind under which the same was published or procured to be published by the accused.

SPECIAL OFFENCES BY OR IN RELATION TO PUBLIC OFFICERS.

Judicial
 corrup-
 tion.

664. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—Whoever :

- (a) Gives, promises, or offers, directly or indirectly, to any person holding any judicial office, or to any other person, any money, money's worth, or valuable consideration

whatsoever, or any office, place, or employment, or participation in the profits of any office, place, or employment, in respect of or in relation to any business which either has been, or is being or about to be, transacted before any person holding any such office, with a view to influence him in his judicial capacity, or to reward him for anything done or omitted in that capacity ;

- (b) Being a person holding any judicial office, asks for, or accepts or agrees to accept from any person, either directly or indirectly, either for himself or any other person, any money, money's worth, or valuable consideration whatsoever, or any office, place, or employment, or participation in the profits of any office, place, or employment, in consideration or on account of his corruptly doing or omitting, or having done or omitted, anything in his judicial capacity.

665. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—

Whoever, being any officer required or authorized, under the provisions of any public Act of Parliament now or hereafter in force, to make any official entry, or to give or make any certificate, certified or Public officers giving false certificates, etc.

PART III. office copy, or other document of a like or similar nature, or any extract from either of them :

(a) Makes any such entry, or makes or gives any certificate, certified or office copy, or other document of a like or similar nature, or any extract from either of them, knowing that the same is false or fictitious, either wholly or in any material particular ;

Certifying
as true
any false
copy or
entry.

(b) Certifies as a true copy of any such document or entry, or any extract therefrom, anything which he knows to be false or fictitious in any material particular.

666. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment as a misdemeanant for any period not exceeding two years ;—

Corruption
of
other
public
officers.

(i.) Whoever, by any means whatever, endeavours to force, persuade, or induce any public officer whatsoever (other than a judicial officer), having authority to do or execute any public act or duty whatsoever :

(a) To do any act which the offender knows to be a violation of such officer's official duty, and which involves, or may involve, any mischief of a public character ;

(b) To abstain from doing any act involving, or which may involve, such mischief, which the offender knows it to be such officer's official duty to do.

(ii.) Whoever, being any such public officer as lastly hereinbefore mentioned, having authority to execute any duty of a public nature, accepts or obtains, or agrees or attempts to accept or obtain,

from any person, for himself or for any other person, any valuable thing, advantage, or gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting any service, favour, or disfavour to any person, with any other public officer. PART III.

(iii.) Whoever gives, offers, or promises to give or obtain any such valuable thing, advantage, or gratification to or for any such public officer as such motive or reward as aforesaid.

(iv.) Whoever, being any public officer, whether exercising judicial functions, or otherwise howsoever having authority to do or execute any act or duty of a public nature, in the exercise of or under the colour of exercising the duties of his office : Oppression by persons in authority.

(a) Knowingly does any act which is in fact illegal ;

(b) Abuses any discretionary power with which he is invested by law, from any motive whatsoever other than the honest exercise in good faith of the authority, or what he upon reasonable grounds believes to be the authority, vested in him. Such motive may be inferred either from the nature of the act complained of, or from the circumstances of the case, or from both combined.

(v.) Whoever, being any public officer whatsoever, having authority to do or execute any act or duty of a public nature, in the exercise or under the

PART III. colour of his office, knowingly does or causes to be done any illegal or excessive act, or corruptly takes, demands, or receives from any person any money or money's worth that is either not due, or that is more than is due, or that is not then due.

Fraud or
breach of
trust
affecting
the public.

(vi.) Whoever, being any public officer whatsoever, having authority to do or execute any act or duty of a public nature, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public (and for which no greater punishment is provided under the provisions hereof), although such fraud or breach of trust is not punishable under the provisions of this Code when committed against a private person.

Wilful
neglect by
persons
entrusted
with ex-
ecution of
public
duties.

(vii.) Whoever, being any public officer whatsoever, having authority to do or execute any duty of a public nature, wilfully, and without reasonable justification or excuse, neglects to perform any duty which he is bound by law to perform, whereby the public peace is or may be broken, or is not restored or maintained, or whereby the person or property of any person is or may be endangered.

Corrupt
acts in
relation to
public
offices.

667. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two year :—Whoever, directly or indirectly :

(a) Corruptly accepts or obtains, or agrees or endeavours to accept or obtain, either for himself or any other person, any money or valuable thing whatsoever in respect of or

in relation to the appointment or proposed PART III.
 appointment to, or resignation or proposed resignation of, any public office or employment in any part of the Sovereign's dominions; or to any participation in the profits or emoluments of any such office or employment, or any consent to any such appointment or resignation;

(b) Corruptly gives or offers, or agrees or promises to give or procure, to or for any person, any money or valuable thing whatsoever in respect of or in relation to any such appointment or resignation, or proposed appointment or resignation, or participation in the profits or emoluments, or any consent to any such appointment or resignation;

(c) Corruptly solicits, recommends, or negotiates in any manner in respect of, or in relation to, any such appointment or resignation, or proposed appointment or resignation, or participation in such profits or emoluments, or any consent to any such appointment or resignation, in expectation of receiving from any person therefor or in consequence thereof any money or valuable thing whatsoever.

Whoever commits either of the offences in this clause mentioned shall, in addition to any punishment hereby authorized, forfeit any right which he has to any office or employment obtained by or in consequence of such offence, and to all participation in the profits or emoluments thereof, and shall be

Disabilities attending commission of corrupt acts in relation to public offices.

PART III. disabled for life from holding the same; and it shall not be lawful for the Crown to dispense or relieve any such person from any such disability.

**SPECIAL OFFENCES IN RELATION TO LETTERS, ETC.,
SENT THROUGH THE POST-OFFICE.**

668. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned as a misdemeanant for any period not exceeding one year:—

Illegally
opening or
detaining
post
letters,
etc.

(i.) Whoever, being employed by or under the post-office, contrary to his duty, without lawful justification or excuse:

(a) Opens, or procures or suffers to be opened, any post letter, card, or packet;

(b) Wilfully detains or delays, or procures or suffers to be detained or delayed, any post letter, card, or packet.

Disclosing
or inter-
cepting
contents
of tele-
graphic
message.

(ii.) Whoever, having any official duty whatsoever connected with, or being employed in any capacity whatever in, the post-office, or acting on behalf of the Postmaster-General, contrary to his duty, discloses or in any way makes known or intercepts the contents, or any part of the contents, of any telegraphic message, or any message entrusted to the Postmaster-General for the purpose of transmission.

Definition
of terms:
"Post
letter, card,
or packet."

669. The expression "post letter, card, or packet," means respectively any letter, card, or packet transmitted by the post under the authority of the Postmaster-General, and includes any letter, card, or packet from the time of its being delivered to a post-office or other authorized place of posting, or to any letter-carrier or other person authorized to receive letters, cards, or packets for the post-office

or the Postmaster-General, until its delivery to the person to whom it is addressed, or to any person considered to be authorized to receive the same according to the ordinary mode of delivering that person's letters. PART III.

The expression "telegraphic message" includes any written or printed message or communication delivered at a post or telegraphic office, or other authorized place for receiving the same, or to any messenger or other person authorized to receive the same for the post-office, or under the authority of the Postmaster-General, for the purpose of being transmitted by a postal telegraph; and every transcript or print of any such message or communication made by any person acting in pursuance of the orders of the Postmaster-General. "Tele-graphic message."

ACTS AND BREACHES OF DUTY TENDING TO PUBLIC DANGER.

670. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding one year :—
Whoever : *

(a) Exposes in any public highway any person infected with any contagious disorder, knowing that such person is so suffering, in such a manner as to endanger the health or lives of any of the public; Acts tending to the spread of contagious disorders.

(b) Knowing that he is so infected, exposes

* The acts comprised in this clause, besides being offences at common law, are likewise punishable, upon summary conviction, under various statutes, among which may be mentioned 11 & 12 Vict. cc. 63 and 107; 18 & 19 Vict. cc. 116 and 121; and more recent statutes passed to amend and extend previous legislation.

PART III.

Mixing ingredients injurious to health in anything intended for the food of man.

Selling or exposing for sale anything intended for the food of man containing anything injurious to health. Corrupting public rivers.

himself in any public highway or place, in such a manner as to endanger the health or lives of any of the public ;

- (c) Knowingly mixes, or procures any person to mix, in anything intended to be sold for the food of man, any ingredient which, either in the quantity authorized to be added, or which, if added in any greater quantity, would be injurious to the health of any person who might partake of the same ;
- (d) Sells, or exposes or causes to be exposed for sale, anything intended for the food of man, knowing or having reasonable cause to believe that the same is injurious to health, either in itself or by reason of any ingredient with which it is admixed ;
- (e) Knowingly does or procures to be done any act whereby the water of any public river is rendered or liable to be rendered unfit for the use of man.*

671. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned, with or without hard labour, for any period not exceeding three months :—

Breaches of duty

Whoever intentionally, and without some reason-

* In connection with the offence comprised in this sub-clause, a very strong doctrine was laid down by Lord Chief Justice Denman in *Rex v. Medley* (6 C. & P. 292), viz. that if persons for their own advantage employ servants to conduct works, they are criminally answerable for what is done by such servants acting under a general authority to manage the works, although they are personally ignorant of what is done, and although what is done is a departure from the original and understood method which the employers authorized, and which they had no reason to suppose was discontinued.

able excuse which he honestly believes to be sufficient, whether in fact it be so or not :

- (i.) Breaks any contract of service or hiring, whether written or verbal ;
- (ii.) Omits some act which he is lawfully bound to do under or by reason of any such contract of service or hiring ;

PART III.
tending to
public
danger.

In either case knowing, or having reasonable cause to know, that the probable consequence of such default or omission, either of itself or in conjunction with any like or similar act by any other person or persons, may be to produce one or other of the following results, viz. :—

- (a) To endanger human life ;
- (b) To cause any bodily injury to any person ;
- (c) To expose any valuable property to destruction or injury ;
- (d) To deprive the inhabitants of any place, either wholly or to a considerable extent, of their supply of gas or water.

UNLAWFUL COERCION.

672. Is guilty of an offence, and liable, upon conviction thereof, to be sentenced to be imprisoned as a misdemeanant for any period not exceeding three months, or to pay a fine not exceeding twenty pounds : *—

Definition
and
punish-
ment.

Whoever, with the express intention to compel any person against his will, (i.) not to do anything

* The punishment at present authorized by statute for the class of offences comprised in this clause is imprisonment, with or without hard labour, for any period not exceeding three months, or a fine not exceeding twenty pounds. I submit that the addition of hard labour is inexpedient. A curious anomaly is that the offences are primarily punishable upon summary conviction ; but the statute permits an accused to object to being summarily dealt with, in which case the same acts at once assume the

PART III. which such person has a lawful right to do ; (ii.) to do anything which such person has a lawful right either to do or not to do :

Putting in
fear of
violence or
injury.

(a) Puts such person, or his wife or child, in fear by means of any threat of bodily violence or injury to the person or property of either of them, the commission of which is an offence against this Code, to be caused or done either by the person using such threat, or by any other person whatsoever ; and which the person to or concerning whom such threat is used reasonably believes is intended to be carried into effect ;

Following
per-
sistently,
or in a
disorderly
manner,
calculated
to cause a
breach of
the peace.

(b) Follows any such person about persistently from place to place ; or, being two or more, follow any such person in a disorderly manner in or through any public thoroughfare ; in either case in such a manner as to be reasonably calculated to excite, or lead, to a breach of the public peace ;

Hiding
tools, etc.

(c) Hides any tools, clothes, or other property of such person ; or otherwise wrongfully hinders such person in the use thereof.*

form of indictable offences. The proper course, is obviously, that these acts should be primarily triable by jury, unless the accused voluntarily pleads guilty, and desires to be dealt with summarily.

* This clause is designed to replace certain of the provisions contained in the "Conspiracy and Protection of Property Act" (*vide* 38 & 39 Vict. c. 86, s. 7). That statute marks, undoubtedly, an important progress, in many respects, in its dealing with difficult and delicate problems. It is not, however, regarded as a final settlement of the questions which it concerns by those who conceive themselves to be mainly affected. As one who has been honoured with the confidence alike of employers and employed in the most important industrial struggles which have occurred

RIOUSLY PREVENTING THE SAILING, ETC., OF A SHIP.

PART III

673. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned with or without hard labour for any period not exceeding one year :—

Whoever, being riotously assembled together to the number of three or more, unlawfully, and with force prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating, of any ship; or unlawfully and with force board any ship with intent to do so.

Being riotously assembled together to the number of three or more, preventing by force the loading or unloading, or sailing, of a ship.

BREACHES OF DUTY BY SHIPOWNERS, MASTERS, AND SEAMEN.

674. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or for any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned, with or without hard labour, for any period not exceeding two years :—Whoever :*

(a) Sends a ship to sea in such unseaworthy

Sending unsea-

during the past twelve years, as well as in relation to legislation which has taken place, dealing with industrial interests, I venture to offer this clause as an impartial and practical solution of a subject difficult by reason of the varied interests, political, social, and industrial, with which it is connected, but one which it is, to my mind, of the highest importance should be approached in a wise and conciliatory spirit; so that whilst, on the one hand, acts of violence and misconduct (which are reprobated by every right-thinking man) shall be clearly declared illegal, no trace shall, on the other hand, remain of class legislation to serve to embitter any contest which may unfortunately arise between employers and employed—legislation which, however it may serve a temporary purpose, can never command that respect of and confidence in the law which, when they exist, afford—far more than penal enactments—the soundest guarantees for a loyal and spontaneous obedience.

* This clause is taken from 38 & 39 Vict. c. 84, s. 4. The punish-

PART III.

worthy
ships to
sea.

state that the life of any person is likely to be thereby endangered.

The managing owner of any British ship sent to sea in such unseaworthy state from any port in the United Kingdom shall be conclusively deemed to have sent such ship to sea within the meaning of this sub-section; but this provision is not to be taken as excluding in any way the criminal responsibility of any other person who is party to the sending such ship to sea in such unseaworthy state.

- (b) Attempts, or is party to any attempt, to send to sea any ship in such unseaworthy state.

Unless in either of the said cases the accused proves that he used all reasonable means to insure such ship being sent to sea in a seaworthy state; or that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable.

- (c) Being a master of any British ship knowingly takes the same to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, unless he proves that her going to sea in such

ment authorized by that statute (viz. two years' imprisonment with hard labour as a *maximum*) certainly appears utterly inadequate to the offence comprised in sub-section (a), at all events. The statute further contains an exceptional provision, unexceptionable if it were made general, but savouring strongly of class legislation, so long as it is at variance with the general principle of our criminal law, authorizing any person accused of any of the offences included in this clause to give evidence in the same manner as any other witness, for the purpose of proving matter of justification or excuse—a privilege which, as I have pointed out, is at present withheld by our law from accused persons generally.

unseaworthy state was, under the cir- PART III.
cumstances, reasonable and justifiable. —

675. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, with or without hard labour, for any period not exceeding one year :—
Whoever :

(i.) Being the master or other person belonging to any British ship, wrongfully forces on shore and leaves behind, or otherwise intentionally and wrongfully leaves behind, in any place on shore or at sea, in or out of the Sovereign's dominions, any seaman or apprentice belonging to such ship, before the completion of the voyage for which such person was engaged, or the return of the ship to the United Kingdom ;

(ii.) Being the master of a British ship :

(a) Discharges any seaman or apprentice in any place situate in any British possession abroad (except the possession in which he was shipped), without previously obtaining the sanction in writing, endorsed on the agreement, of some public shipping master, or other officer duly sanctioned by the local government in that behalf, or (in the absence of any such functionary) of the chief officer of customs resident at or near the place where the discharge takes place ;

(b) Discharges any seaman or apprentice at any place out of the Sovereign's dominions, without previously obtaining the sanction, so endorsed as aforesaid, of the British consular officer there, or (in his absence)

Forcing
seamen on
shore.

Discharg-
ing sea-
men in
any
British
possession,
without
lawful
authority.

Dis-
charging
seamen at
any place
out of the
dominions
of the
Sovereign

PART III.

without
lawful
authority.
Leaving
seamen
behind in
any
British
possession,
without
lawful
authori-
ty.

Leaving
seamen
behind out
of the
Sove-
reign's
dominions,
without
lawful
authori-
ty.

Duty of
function-
ary or
other
person
applied to
to grant
authoriza-
tion.

Rule of
evidence.

of two respectable * merchants resident there ;

(c) Leaves behind any seaman or apprentice at any place situate in any British possession abroad, on any ground whatever, without previously obtaining a certificate in writing, so endorsed as aforesaid, from such consular officer or merchant as aforesaid, stating the fact and the cause thereof, whether such cause be unfitness or inability to proceed to sea, or desertion or disappearance :

(d) Leaves behind any seaman or apprentice at any place out of the Sovereign's dominions, on shore or at sea, on any ground whatever, without previously obtaining the certificate endorsed in manner and to the effect in the last preceding sub-section mentioned, of such consular officer there, or (in his absence) of two respectable merchants, if there are any such at or near the place where the ship then is.

The said functionaries respectively shall, and the said merchants may, examine into the grounds of such proposed discharge, or into the allegation of such unfitness, inability, desertion, or disappearance as aforesaid in a summary way, and may for that purpose, if they think fit so to do, administer oaths, and may either grant or refuse such sanction or certificate as appears to them to be just.

Upon the trial of any person for any of the offences in this clause mentioned, the burden of

* I venture to think this is a term too indefinite to find place in a penal statute. I take it, however, as I find it from 17 & 18 Vict. c. 104, s. 207.

producing the sanction or certificate above mentioned, PART III.
 or proving that he obtained the same previously to
 having discharged or left behind such seaman or
 apprentice, or that it was impracticable for him to
 obtain such sanction or certificate, shall be upon the
 person accused.

(iii.) Whoever, being the master of, or any sea- Acts tend-
 ing to loss
 of or
 danger to
 ship, or to
 endanger
 life or
 safety of
 any person
 on board.
 man or apprentice belonging to, any British ship,
 by any wilful breach of duty, or by reason of
 drunkenness :

(a) Does any act tending to the immediate loss,
 destruction, or serious danger of such ship,
 or tending immediately to endanger the
 life or limb of any person belonging to, or
 on board of, such ship ;

(b) Refuses or omits to do any lawful act proper
 and requisite to be done by him for pre-
 serving such ship from immediate loss,
 destruction, or serious damage, or for pre-
 serving any person belonging to, or on
 board of, such ship from immediate danger
 to life or limb.

(iv.) Being the master or person in charge of Breach of
 duty after
 a collision.
 any ship which has collided with any other ship,
 fails, without reasonable cause (the proof whereof
 shall lie upon him), to stay by such other ship until
 he has ascertained that she has no need of further
 assistance ; or fails to render to such other ship, her
 master, crew, and passengers (if any), such assistance
 as may be practicable, and as may be necessary in
 order to save them from any danger caused by
 such collision ; or wilfully fails to give to the master
 or person in charge of such other ship the name of

PART III. his own ship, and her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from and to which she is bound.

OFFENCES IN AID OF SMUGGLING.

676. Is guilty of an offence, and liable, upon conviction thereof, to penal servitude for seven years, or any lesser term for which penal servitude may be lawfully awarded, or to be imprisoned with or without hard labour for any period not exceeding two years :

Shooting at officers of customs or excise, or employed for the prevention of smuggling in the execution of their office.

(i.) Whoever intentionally shoots at :

(a) Any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, or any officer of customs or excise, or other person duly employed for the prevention of smuggling, in the execution of their office, or any person lawfully acting in his or their aid.

Shooting at any vessel or boat belonging to the navy, or in the service of the revenue. Persons assembled together armed for the purpose of smuggling or aiding therein.

(b) Any vessel or boat belonging to the navy, or in the service of the revenue, within a distance of one hundred leagues of any part of the coast of the United Kingdom.

(ii.) Whoever assembles together to the number of three or more in order to aid or assist :—

(a) In landing, removing, or carrying away any goods the importation of which is prohibited or restricted, or any goods which, under the provisions of any customs act now or hereafter for the time being in force, are liable to any duty which has not been paid or secured ;

(b) In rescuing or taking away any such goods as aforesaid after seizure, from any officer of customs, or other person authorized to receive the same, or any person lawfully employed by, or acting in aid of, any such officer or other person, or from the place where the same have been lodged by them ;

(c) In rescuing any person who has been lawfully apprehended for any offence against any statute relating to the customs for the time being in force, or in preventing the lawful apprehension of any such person ;

Any of such persons so assembled together being, to the knowledge of the offender, armed with any firearm, bludgeon, or other offensive weapon.*

677. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned with or without hard labour for any period not exceeding two years :—

Whoever by force or violence assaults, resists, or obstructs any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, or any officer of customs or excise, or other person duly employed for the prevention of smuggling, in the due execution of their or his duty, or any person lawfully acting in his or their aid.

By force or violence assaulting, resisting, or obstructing officers of customs or excise, or employed in the prevention of smuggling in the execution of their duty.

678. Is guilty of an offence, and liable, upon conviction thereof, to be imprisoned as a misdemeanant for any period not exceeding one year : Whoever :—

(a) Being two or more persons assemble to—

Assembling or

* *Vide* Rex. v. Cosans, 1 Leach, C. C., 342 ; and Rex. v. Noakes, 5 C. and P. 226.

PART III.

procuring
persons to
assemble
together
in aid of
smuggling

gether for the purpose of being concerned in the landing or unshipping, carrying away, conveying or concealing any goods by law prohibited to be imported, or the duty payable on which, under the provisions of any customs act now or hereafter for the time being in force, has not been paid or secured;

- (b) Being so assembled together, unship or carry away, convey or conceal, any such goods;
- (c) Procures, hires, or deposes, or authorizes any other person to procure or hire, any person or persons to assemble together for the purpose of being concerned in the landing, or unshipping, carrying away, conveying, or concealing, any such goods as aforesaid.

INTERFERENCE IN FOREIGN HOSTILITIES.

Definition
of "friend-
ly State."

679. The expression "friendly State" hereinafter used means any foreign State at peace with the Sovereign for the time being of these realms.

Dominions
of the
Sovereign
includes
the terri-
torial
waters.

The expression "the dominions of the Sovereign" includes the territorial waters adjacent thereto.

680. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, with or without hard labour, for any period not exceeding two years :—

(i.) Whoever, without the licence of the Sovereign under the sign manual, or signified by an Order in Council :

- (a) Being a British subject, within or without the Sovereign's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign State at war with any friendly State ; PART III.
Enlist-ment in service of a foreign State.
- (b) Whether a British subject or not, at any place within the Sovereign's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign State as aforesaid ;
- (c) Being a British subject, quits, or goes on board any ship with a view to quitting, the Sovereign's dominions with intent to accept any commission or engagement in the military or naval service of any foreign State at war with any friendly State ; Quitting the Sovereign's dominions with a view to serve a foreign State.
- (d) Whether a British subject or not, within the Sovereign's dominions, induces any other person to quit, or go on board any ship with a view to quitting, the Sovereign's dominions with the like intent ;
- (e) Being a master or owner of any ship, knowingly takes on board, or engages to take on board, or has on board such ship, anywhere within the Sovereign's dominions, any of the following persons, hereinafter referred to as illegally enlisted persons, that is to say :—(i.) Any person who, being a British subject, within or without the dominions of the Sovereign, Taking illegally enlisted persons on board ship.

PART III.

has, without the licence of the Sovereign, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign State at war with any friendly State; (ii.) Any person, being a British subject, who, without the licence of the Sovereign, is about to quit the Sovereign's dominions with intent to accept any such commission or engagement; (iii.) Any person who has been induced to embark under a misrepresentation or false representation of or as to the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State;

Illegal
ship-
building.

(f) Within the Sovereign's dominions, with intent or knowledge, or having reasonable cause to believe, that the same will be employed in the military or naval service of any foreign State at war with any friendly State, builds, agrees to build, or causes to be built, equips, despatches, or causes or allows to be despatched, or issues or delivers, any commission for any ship.

Proviso.

Provided that any person building, causing to be built, or equipping a ship, in any one of the cases mentioned in sub-section (f), in pursuance of a contract made before the commencement of such war

as aforesaid, shall not be liable to any punishment or penalty which is hereby authorized in respect of such building or equipping, if he satisfies the conditions following, that is to say :—

PART III.

(i.) If forthwith upon a proclamation of neutrality being issued by the Sovereign, he gives notice to one of the Sovereign's principal Secretaries of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract, and of any matters relating to, or done or to be done under, the contract, as may be required by such Secretary of State ;

(ii.) If he gives such security, and takes and permits to take such other measures, if any, as such Secretary of State may prescribe for insuring that such ship shall not be despatched, delivered, or removed without the licence of the Sovereign until the termination of such war as aforesaid.

(ii.) Whoever induces any other person to quit the Sovereign's dominions, or to embark on any ship within the Sovereign's dominions, under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State.

Embark-
ing per-
sons under
false re-
presenta-
tion as to
service.

(iii.) Within the dominions of the Sovereign, and without the licence of the Sovereign under the sign manual, or signified by an Order in Council :

PART III.

Adding to the warlike equipment of foreign ships.

(a) By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting, the warlike force of any ship which, at the time of her being within the dominions of the Sovereign, was a ship in the military or naval service of any foreign State at war with any friendly State ;

Fitting out naval or military expeditions.

(b) Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly State, or is engaged in such preparation or fitting out, or assisting therein, or is employed in any capacity in such expedition.

Presumption as to evidence in case of building or delivery of ships in certain cases.

681. Where any ship is built by order of, or on behalf of, any foreign State when at war with a friendly State, or is delivered to or by the order of such foreign State or any person who, to the knowledge of the person building, is the agent of such foreign State, or is paid for by such foreign State or such agent, and is employed in the military or naval service of such foreign State, such ship shall, until the contrary is proved, be presumed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign State.

682. Every ship in respect of which any such PART III. offence as is comprised in sub-section (f) of clause Forfeiture of ship, etc. 680 is committed, and the equipment of such ship, shall be forfeited to the Crown. Every ship, and the equipment thereof, and all arms and munitions of war used in or forming part of any such expedition as is mentioned in sub-section (b) of sub-clause (iii.) of clause 680 shall be forfeited to the Crown. Such forfeitures respectively shall be in addition to any punishment which is by such clause authorized to be inflicted.

Provided that all proceedings for the condemna- Jurisdiction in respect of forfeiture of ships, etc. tion and forfeiture of any ship, or ship and equipment, or arms and munitions of war, under the provisions hereof, shall require the sanction of one of the Sovereign's principal Secretaries of State, and such proceedings shall be taken in the Admiralty Division of the High Court of Justice, and not otherwise; and such Division shall have, in respect of any such ship or other matter brought before it in pursuance hereof, all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction. And whenever any offence against any of the sub-sections of clause 680 has been committed by any person, by reason whereof a ship, or ship and equipment, or arms and munitions of war has or have become liable to forfeiture, proceedings may be instituted contemporaneously or not, as may be thought fit, against the offender in any Court having jurisdiction over such offence, and against the ship, or ship and equipment, or arms and munitions of war, for the forfeiture thereof, in the Admiralty Division of the High Court of Justice;

PART III. but it shall not be necessary to take proceedings against the offender because proceedings are instituted for the forfeiture, or to take proceedings for the forfeiture because proceedings are taken against the offender.

Detention
of ships
pending
proceed-
ings.

683. Every ship mentioned in sub-section (e) of clause 680 shall be detained until the conviction or acquittal of the master or owner thereof, and until the penalties inflicted upon such master or owner have been paid, or until such master or owner has given security for the payment of such penalties, to the satisfaction of the High Court of Criminal Justice, or a Judge thereof, or as such Court or Judge shall direct.

Dealing
with
illegally
enlisted
persons.

684. Every illegally enlisted person shall, immediately on the discovery of the offence mentioned in sub-section (e) of clause 680, be taken on shore, and shall not be allowed to return to the ship.

FRAUDULENT ACTS IN RELATION TO ELECTIONS.

Offences
in relation
to nomina-
tion forms,
ballot
papers,
etc.

685. Is guilty of an offence, and liable, upon conviction thereof, if the offender is a returning officer, or any officer or clerk in attendance at a polling station, to be imprisoned, with or without hard labour, for any period not exceeding two years; and if he is any other person, to be imprisoned, with or without hard labour, for any period not exceeding six months :—

Whoever, at any election, parliamentary or municipal, holden in pursuance of any Act of Parliament now or hereafter for the time being in force :

- (a) Forges, or fraudulently defaces or destroys, PART III.
any nomination paper used or intended to
be used at any such election ;
- (b) Delivers to the returning officer, at any such
election, any nomination paper knowing
the same to be forged ;
- (c) Forges or counterfeits, or fraudulently de-
faced or destroys, any ballot paper, or the
official mark on any ballot paper, used at
any such election ;
- (d) Without due authority, supplies any ballot
paper to be used in any such election to
any person ;
- (e) Fraudulently puts into any ballot box, at any
such election, any paper other than the
ballot paper which he is authorized by
law to put therein ;
- (f) Fraudulently takes out of any polling station,
at any such election, any ballot paper ;
- (g) Without due authority, destroys, takes,
opens, or otherwise interferes with, any
ballot box or packet of ballot papers
then in use for the purposes of any such
election ;
- (h) Attempts to commit either of the said acts.

686. Is guilty of an offence, and liable, upon con-
viction thereof, to imprisonment as a misdemeanant
for any period not exceeding one year :

Whoever, being concerned in the transmission or
delivery of any writ for the election of a member
to serve in Parliament, wilfully neglects or delays
to transmit or deliver any such writ.

Wilfully
neglecting
or delaying
the trans-
mission or
delivery of
any writ
for the
election of
a member
to serve in
Parlia-
ment.

PART III.

BRIBERY, UNDUE INFLUENCE, AND PERSONATION
AT ELECTIONS.

Definition
and
punish-
ment of
bribery at
elections.

687. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment as a misdemeanant for any period not exceeding two years :—

(i.) Whoever knowingly, directly or indirectly, by himself or by any other person on his behalf :

With a view to induce any person having or claiming to have a vote thereat, to vote or refrain from voting at any election, parliamentary or municipal, holden in pursuance of any Act of Parliament now or hereafter for the time being in force, corruptly, on account of any such person having voted or refrained from voting at any such election ; or—

With a view to induce any person to procure, or endeavour to procure, the return of any person at any such election, or the vote of any person having or claiming to have a vote at any such election :

(a) Gives, lends, or agrees to give or lend, or offers, promises, or promises to procure, or endeavours to procure, any money, money's worth, or valuable consideration whatsoever, to or for any person having or claiming to have a vote at any such election, or to or for any person on behalf of any person having or claiming to have such vote, or to or for any person whatever.

(b) Gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place, or employment, [or participa-

tion in the profits of any office, place, or employment,] * to or for any person having or claiming to have a vote at any such election, or to or for any person whatever. PART III.

(ii.) Whoever :

(a) Upon or in consequence of any such money, money's worth, gift, loan, offer, promise, procurement or agreement, or other like consideration, procures, engages, promises, or endeavours to procure the return of any person at any such election, or the vote of any person having or claiming to have a vote at any such election ;

(b) Advances, or pays, or causes to be paid, any money or money's worth to or to the use of any other person, with the intent that such money or money's worth, or any part thereof, shall be expended in any or either of the unlawful purposes in either of the sub-clauses of this clause mentioned at any such election ; or who knowingly pays or causes to be paid any money or money's worth to any person, in discharge or repayment of any money or money's worth wholly or in part expended for any or either of the unlawful purposes in either of the said sub-clauses at any such election ;

(iii.) Whoever :

(a) Before or during any such election, directly or indirectly, by himself or by any other

* The words within brackets are not contained in 17 & 18 Vict. c. 102 ; they are to be found, however, in 5 & 6 Edw. 6, c. 16, and 49 Geo. 3, c. 26.

PART III.

person on his behalf, being a person having or claiming to have a vote at such election, receives, agrees, or contracts for any money, or money's worth, gift, loan, office, place, or employment, or participation in the profits or emoluments of any office, place, or employment, or other like consideration, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any such election. Or—

- (b) After any such election receives any money, money's worth, gift, loan, office, place, or employment, or participation in the profits or emolument of any office, place, or employment, or other like consideration, on account of any person having voted or refrained from voting, or on account of having induced any other person to vote or to refrain from voting, or to promise or agree so to do.

Provided that nothing in sub-clauses (i.) and (ii.) shall be deemed to extend to any money paid or agreed to be paid for, or on account of, any legal expenses incurred in good faith at or concerning any such election.

Undue
influence
in relation
to voters.

688. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment as a misdemeanant for any period not exceeding two years :—Whoever :

- (a) Knowingly, directly or indirectly, by himself or by any other person on his behalf,

in order to induce or compel any person PART III. having, or claiming to have, a vote at any such election as aforesaid, to vote or refrain from voting thereat; or on account of his having voted or refrained from voting thereat; (i.) Makes use of, or threatens to make use of, any force, violence, or restraint to or upon such person; (ii.) Inflicts, or threatens the infliction of, by himself or by or through any other person, any injury, damage, harm, or loss to or upon, or in any other manner intimidates,* any such person;

- (b) By abduction, duress, or any fraudulent device or contrivance, impedes, prevents, or otherwise interferes with the free exercise of the franchise of any person having or claiming to have a vote at any such election; or thereby compels, induces, or prevails upon any such person either to give or refrain from giving his vote at any such election as aforesaid.

689. Is guilty of an offence, and liable, upon conviction thereof, to imprisonment, with or without hard labour, for any period not exceeding six months:—
Whoever:

- (a) Knowingly personates and falsely assumes to vote at any election as aforesaid, in the name of another person, whether living or dead;

* The words used in 17 & 18 Vict. c. 102, s. 5, are, "Or in any other manner practises intimidation upon or against any person."

PART III.

- (b) Fraudulently applies for a ballot paper, at or in relation to any such election, in the name of any other person, whether the name be that of a person living or dead, or of a fictitious person ;
- (c) Having voted once at any such election, fraudulently applies at the same election for a ballot paper in his own name ;
- (d) Falsely or fraudulently signs any declaration in relation to any such election in the name of any other person, whether living or dead ;
- (e) Transmits as genuine any such false or falsified declaration, knowing the same to be false or falsified ;
- (f) Knowingly and wilfully makes any false statement of fact in any declaration in relation to any such election.

Limita-
tion of
time for
instituting
a prosecu-
tion for
offences in
relation to
an election

690. No person shall be prosecuted for any offence comprised in clauses 685–689 inclusive, unless such prosecution be commenced against him within twelve months next after the offence is alleged to have been committed, or where the offence or the offender is reported by any judge or commissioner trying any petition, or holding any inquiry under the provisions of any statute now or hereafter for the time being in force, relating to or to the conduct of any election at which the offence is alleged to have been committed, then within six months after such report is laid before Parliament.

Construc-
tion of
clauses

691. Whenever it is enacted under any provision contained in either of the parts of this Code respect-

ively, that no proceedings shall be allowed to be taken against any person for any offence alleged to have been committed, unless such proceedings are commenced against the alleged offender before a magistrate or justice of the peace within a specified time; or that no person shall be prosecuted for a particular offence unless the prosecution therefor be commenced against him within a specified time, the laying an information or the issue of a summons or warrant shall not be deemed a commencement of proceedings or a commencement of a prosecution within the true meaning of the said enactments, until such warrant or summons has been executed against or served on the alleged offender,* save and except where the execution or service of such warrant or summons is prevented by the absconding or concealment, or other act, of such alleged offender.

PART III.

limiting
the time
within
which a
prosecu-
tion may
be insti-
tuted.

THIS part of the draft Code, which defines offences and proposes to prescribe their punishment, is designed to comprise every act which ought, in my view, to be included in a Code embracing the law in relation to *indictable* offences. I have already directed attention to some acts which are at present indictable offences, principally at common law, and which, I submit, ought not to be so declared by the legislature. There are, however, some further ones which at present fall within the category of indictable offences, in some instances by the common law, in others having been so created by statute. Following the plan I have hitherto pursued in this work, of stating frankly the reasons for any proposed departure, of a fundamental character, from the

* This has been held to be the true construction, where the time for the commencement of a prosecution is limited by statute (*vide* R. v. Hull, 2 Fost. v. Fin. 16, and R. v. Casbolt, 11 C. C. C., 385).

PART III. existing law or practice upon any given subject—a course
 — which undoubtedly facilitates, and probably invites an addition of, criticism, which, however, so far from deprecating, I regard as essential to the enduring success of any proposed Code of Law—I desire to call attention prominently to those offences, and to state explicitly the grounds upon which they are advisedly omitted from this draft Code. With the exceptions to which attention is thus directed, or to which attention is called in foot-notes, this part of the draft Code will, I believe, be found to contain provision for every offence of a practical character which may now be made the subject of an indictment. In affirming this, I write with a cautious hesitation which will be intelligible to every one who is familiar with the extreme complexity of our criminal law; a hesitation which, however, furnishes, I venture to think, a most conclusive argument—if, indeed, the question had not passed beyond the region of controversy—in favour of codification. If it should happen that any offence is here omitted which ought to be included, its addition will be so easy that it will not be upon that ground certainly that my labours will be disapproved.

Firstly, the following acts, which are offences under the present law, although practically obsolete, are not included in this draft Code; their repeal was strongly urged by the Criminal Law Commissioners so far back as 1840 (*vide* their 5th Report, pp. 33–39):—*

- (a) Barratry, which is the offence of frequently inciting and stirring up suits between parties (1 Hawk. P. C., c. 81, s. 1).

* Upon the subject of leaving unrepealed laws, of which little better can be said than that, being in a dormant or nearly obsolete state, they work no evil, the learned Commissioners forcibly observe: “It cannot properly be assumed that a law, defective in principle, works no evil, because prosecutions founded upon it are rare. . . . It is in itself an evil of no small magnitude that people should live under the fear of an oppressive law, although it may be improbable that it should be actually enforced. The objection may, we conceive, be founded on a still higher principle than mere personal inconvenience occasioned to individuals. To insure respect to the laws, it must be known that they are founded on the

- (b) Maintenance, which is defined to be an officious PART III.
intermeddling in a lawsuit by maintaining or
assisting either party thereto, with money or
otherwise, to prosecute or defend it (*vide* 1 Hawk.
P. C., c. 83, s. 23).
- (c) Champerty, which is a species of maintenance, with
the addition of a bargain between the parties to
divide what is sued for if the suit is successful
(1 Hawk. P. C., c. 84, s. 1).

Suing in the name of a fictitious plaintiff, or of a real person without his authority, is likewise an offence at common law, which, however, may be adequately and more properly punished as a contempt of Court than as a criminal offence.

Under a statute passed in the reign of Queen Elizabeth, and which is unrepealed, compounding an action brought to recover a money penalty under a penal statute is an indictable offence, punishable with fine and imprisonment (*vide* 18 Eliz. c. 5; and 53 Geo. 3, c. 138). A far better protection, from every point of view, would be not to permit any such action to be brought without leave of the High Court of Justice, or a Judge thereof; and to require the applicant, as a condition of leave being granted, to enter into a bond, with or without a surety or sureties, to prosecute the action, and not to allow the same to abate without leave.

And by a statute so comparatively modern as 12 Geo. 1, c. 29, s. 4, any person practising as a solicitor or agent in any suit or action after having been convicted of, amongst other offences, barratry, is liable, without trial, upon a summary inquiry by a Judge of the Court in which the suit or action is brought, to seven years' penal servitude. It is difficult to imagine how an enactment of this character can

basis of reason and experience; and to allow large and undefined branches of it to rest on no better foundation than that in a semi-barbarous state of society laws of this character might be necessary and proper, is to expose the whole system to suspicion. So long as such laws exist they must necessarily obstruct every attempt to simplify the criminal law, and to render it more accessible to the whole community."

PART III. have been permitted to remain upon the statute book, except that, possibly, the very extreme improbability of its ever being put in force may have led to its being considered harmless.

Another class of case omitted has relation to persons acquiring to themselves the character of incorrigible rogues and vagaonds; and some other acts which, when committed for the first time, are punishable, upon summary conviction before a magistrate or justices, often by a mere pecuniary penalty; but assume the character of indictable offences when committed by a person after a previous conviction for the like offence.

Thus offenders committing certain acts are by statute defined to be rogues and vagabonds, and, being convicted as such summarily before a magistrate or justices, are liable to be imprisoned, with or without hard labour, for a term not exceeding three months. These persons, superadding to such offence the incident of previous conviction, *inter alia* are by statute declared "incorrigible rogues," and may be committed to prison to await the next quarter or general sessions, being kept to hard labour meanwhile, and at such sessions may be ordered to be imprisoned with hard labour for twelve calendar months (*vide* 5 Geo. 4, c. 83, s. 5). There is really no reason why such persons should not be sentenced by a magistrate or in petty sessions, subject to a general provision, which should, I think, be enacted by the legislature, giving a right to every person who maintains his innocence to demand to be sent for trial before a jury in every case in which he is liable, upon conviction, to be imprisoned without the option of a fine. Holding, then, the view that the offence of being an incorrigible rogue should be included in a Code of summary offences, I have not thought it right to embody the statutory enactments relating to that offence in the present draft Code, which deals exclusively with offences proper to be tried and determined by a jury upon an Act of Accusation. It is also, I think, a somewhat questionable doctrine that a repetition of an offence, in some cases not grave in itself, should

change the *character* of the offence. Increased penalties PART III.
would seem to be the more appropriate remedy. Upon the
question of punishments generally it never can be too well
borne in mind that crimes are more effectually prevented
by the *certainty* than by the *severity* of punishment.

The next class of offence, minor forms of which find no place here, is that known as common nuisances, defined somewhat widely to be the doing of something to the annoyance of all the lieges, or neglecting to do some good which the common welfare requires (1 Hawk. P. C., c. 75, s. 1). Of the nature of common nuisances are acts of a widely different character, as, *e.g.*, being a common scold—an offence confined to females, and the punishment for which was for the offender to be placed in an engine of correction, called the cucking (or scolding) stool, and then immersed in water (1 Hawk. P. C., c. 75, s. 5);—eaves-dropping, which is to this hour an indictable offence; as is also the act of an innkeeper refusing food and lodging to a traveller without a sufficient cause (1 Hawk. P. C., c. 78, s. 2)—but neither of which acts can properly be regarded as criminal;—keeping disorderly houses;—carrying on offensive trades or manufactures;—obstructions of, and neglect to repair, bridges and highways,* and so forth;—each of which should be regarded as matters of police and dealt with summarily, and also brought within the strong controlling influence of prohibitory or mandatory injunction;—and acts dangerous to life or health, the serious forms of which are included in this draft Code, and the minor ones of which may be sufficiently punished and prevented under the summary powers of magistrates and justices of the peace. Pretending to exercise witchcraft is an indictable offence under 9 Geo. 2, c. 5, s. 4, having taken

* Can anything be more anomalous, *e.g.* than to test the liability of a parish to repair a highway, or the right of a telegraph company to erect a telegraphic pole on the waste at the side of a high-road, by the agency of the criminal law; to treat, in fact, as a crime an act done in the *bonâ fide* assertion of a right, or an act omitted in consequence of a disputed question of legal liability?

PART III. the place of the offence of *actual* witchcraft, which, imaginary as such an offence is, was down to that year punishable with death (*vide* 33 Hen. 8, c. 8, and 1 Jac. 1, c. 12.) "These acts," says Sir W. Blackstone, "long continued in force, to the terror of all ancient females in the kingdom; and many poor wretches were sacrificed thereby to the prejudice of their neighbours; not a few having, by some means or other, confessed the fact at the gallows." When the offence of pretending to exercise witchcraft took the place of this superstition, it was classed amongst the offences against God and the Christian religion; but as any such pretence is really only likely to be put forward for the purpose of petty fraud, the offence, if committed, may be punished adequately under the summary provisions of the Vagrant Act (5 Geo. IV. c. 83, s. 4).

Another class of offences advisedly omitted are those the legislation in relation to which Sir William Blackstone contemptuously speaks of as "that bastard slip, the game laws." It would be out of place to notice here those trespasses in pursuit of game which are punishable upon summary conviction. But when the like acts, combined with some additional circumstance which the law regards as an aggravation, are declared to be indictable offences, the law assumes a character of severity which is generally disproportioned to the offence, and which is tinged with the worst features of class legislation. Thus, it is provided by 9 Geo. 4, c. 69, s. 9, that if any persons to the number of three or more shall, by night (*i.e.* between the end of the first hour after sunset or the beginning of the last hour before sunrise), unlawfully enter or be on any land, whether open or enclosed, or on any public road, highway, or path, or the sides thereof, or at the openings, outlets, or gates from any such lands into such roads, for the purpose of destroying game or rabbits (any of them being armed with any gun, bludgeon, or other offensive weapon, even, *e.g.*, a walking-stick), they shall each be liable to penal servitude for any term not exceeding *fourteen years*. It has been urged that this

severity is imposed more as a check against conflicts between game-poachers and gamekeepers, than to protect game. This, however, leaves untouched the primary question as to how far the game laws themselves and their operation provoke these unhappy conflicts. But I do not hesitate to call in question the validity of this apology, for which purpose I pray in aid another section of the same statute, which is exclusively directed against the mere taking of game or rabbits; in other words, a simple infringement of what is claimed as a right of property, apart from any question of personal conflict, but in which the same element of unjustifiable severity is present. Section 1 authorizes the infliction of *seven years'* penal servitude in the case of any person who takes or destroys, by night, any game or rabbits on any land, open or enclosed, or in any public road, highway, or path, or the sides thereof, or at the openings, outlets, or gates from any such lands into such roads, or is in any such place with, *inter alia*, a net or other instrument for the purpose of snaring game or rabbits, having in either case been twice previously convicted of a similar offence. An assault upon a game or forest keeper in the execution of his duty assumes the character of felony, punishable with abnormal severity; and, indeed, the entire penal legislation upon the subject of game, etc., is a dishonouring remnant of the cruel forest laws, whereby, as Sir William Blackstone has said, "the slaughter of a beast was made almost as penal as the death of a man."

An obsolete statute (3 Edw. 1, c. 24) still remains upon the statute book, which ought long since to have been repealed, by which it is a misdemeanour to cite or publish "any false news or tales, whereby discord or occasion of discord or slander may grow between the great men of the nation."

Similarly, statutes, a remnant either of the religious intolerance of a former age, or made upon the spur of the occasion to meet the real or supposed exigencies of the day, still remain part of the law of the land, although they are openly evaded, and an attempt to enforce them would pro-

PART III. bably never enter a sane mind (*vide*, amongst others, 29 Car. 2, c. 29; 9 & 10 Will. 3, c. 32; 53 Geo. 3, c. 127; 10 Geo. 4, c. 7).

The 2 and 3 Edw. 6, c. 1, and 14 Car. 2, c. 4, contain penal enactments directed against clergymen of the Established Church who refuse to use the Book of Common Prayer, or wilfully use any other rite or ceremony other than is set forth or mentioned therein; or preach or speak anything in derogation of the Book of Common Prayer. Upon conviction of any of such offences a third time, the punishment is imprisonment for life. The policy of giving the ordinary criminal tribunals jurisdiction over this class of case, is very questionable; and it may well be urged that acts of a purely ecclesiastical character, however censurable, ought not to be included within the category of ordinary crime.

Another kind of offence, at present an indictable misdemeanour, is refusing, without lawful excuse, to serve an office; whilst disobedience of any statute affecting the public, or of any order of a Court of competent jurisdiction, for which no other penalty or mode of proceeding is expressly provided, is likewise a misdemeanour punishable with fine and imprisonment, and this, it would seem, even where the disobedience is involuntary—as, *e.g.*, an omission to pay a sum of money ordered to be paid (*vide* 2 Hawk. P.C.; *R. v. Ferrall*, 2 Den., 51).

Various statutes passed for the care and regulation of lunatics contain very important provisions of a penal character. These, however, are chiefly of what I would call an administrative character, and may with advantage be declared offences punishable on summary conviction. Acts involving bodily injury, or injury to health by any unlawful act or omission, would of course be punishable under the general law contained in this draft Code.

Lastly, those offences which are the subject of *præmunire* (as to which *vide* Coke's 1 Inst. 130*a*) have not appeared to me proper to be included within a Criminal Code; prosecutions upon *præmunire* being practically unknown, and, the

statutes relating to the offence being long since dormant, of no consequence as a matter of practical law, and interesting only from their connection with our political and ecclesiastical history.*

PART III.

* The principal offences of *præmunire* are :—

(i.) Those relating to the See of Rome, *e.g.* making use of papal bulls; appealing to Rome from any of the Queen's Courts; maintaining the Pope's power; as to which offences *vide* 25 Edw. 3, st. 6;* 13 Rich. 2, st. 2, cc. 2, 3; 16 Rich. 2, c. 5 (commonly called the Statute of *Præmunire*); 2 Hen. 4, cc. 3, 4; 24 Hen. 8, c. 12; 25 Hen. 8, cc. 19 and 21; 28 Hen. 8, c. 16; 5 Eliz. c. 1; † 13 Eliz. c. 2. ‡

(ii.) Suing in foreign Courts to defeat proceedings in the Courts of this realm (27 Edw. 3, st. 1, c. 1).

(iii.) The omission by any dean and chapter to proceed to the election of a bishop, or by any archbishop or bishop to consecrate such person within twenty days after receiving the Sovereign's *congé d'élire* (25 Hen. 8, c. 20, s. 7; repealed by 1 & 2 Phil. and Mary, c. 8, and revived by 1 Eliz. c. 7).

(iv.) Obtaining any stay of proceedings other than by arrest of judgment or writ of error, in any suit for a monopoly (21 Jac. 1, c. 3, s. 4).

(v.) Procuring any stay of proceedings, other than by the authority of the Court, in any action brought against any person for making provision or purveyance for the Crown (12 Car. 2, c. 24, s. 14).

(vi.) Asserting maliciously and advisedly, by speaking or writing, that both or either House of Parliament has a legislative authority without the Crown (13 Car. 2, c. 1, s. 3).

(vii.) Imprisoning any subject of this realm in any place beyond the seas contrary to the provisions of the *Habeas Corpus* Act (31 Car. 2, c. 2, s. 12).

(viii.) Asserting, by preaching, teaching, or advised-speaking, that any person hath any right or title to the Crown of these realms, otherwise than according to the Act of Settlement and Act of Union between England and Scotland, or that the kings and queens of this realm, with

* Ruffhead's edition. Printed 25 Edw. 3, st. 4, in Statutes of the Realm.

† Ruffhead. 1 Eliz. c. 23, in Statutes of the Realm.

‡ Several statutes, or portions of statutes, under which certain other acts were declared liable to the pains and penalties of *præmunire*, as *e.g.* contributing to the maintenance of Roman Catholic colleges and seminaries (27 Eliz. c. 2), have been repealed by recent statutes, and notably by those passed from time to time for the revision of the statute law.

§ Ruffhead. 6 Anne, c. 41, s. 2, in Statutes of the Realm.

PART III.

and by the authority of Parliament, are not able to make laws to limit the descent to the Crown (6 Anne, c. 7, s. 2). §

(ix.) Knowingly or wilfully presuming to solemnize, or assisting or being present at, any marriage with any descendant of the body of George II. (other than the issue of princesses marrying into foreign families) without the Sovereign's consent (12 Geo. 3, c. 11, s. 3, "The Royal Marriage Act").

The penalties of *præmunire* are : that from the conviction, the defendant shall be out of the Sovereign's protection, and his lands, tenements, goods, and chattels forfeited to the Crown ; and that his body shall remain in prison at the Sovereign's pleasure, or (as some authorities have it) during life (*vide* 1 Coke's Inst. 130*a*).

CHAPTER XX.

POWER TO COURT, UPON CONVICTION, TO ORDER
RESTITUTION OF PROPERTY AND COMPENSATION
FOR INJURIES.

692. ANY Court before which any person is con- PART III.
victed of any offence against this Code may, if in Court may
its discretion it shall think fit, make any of the order
following orders, upon the application of the person restoration
aggrieved, made immediately after such conviction of any pro-
in the presence and hearing of the person convicted, perty of
who shall be entitled to be heard thereon before which any
any such order is made, either by himself or by person has
counsel, viz. : been de-
prived by
any offence
against
this Code.

- (a) Whenever any person is convicted of any offence against this Code, by which any person has been deprived of any property whatsoever, the Court may order the said property, or any part thereof, in whosoever possession the same may be, to be restored to the owner thereof, or his lawful representative or assignee, and such property shall be restored accordingly; or may order the person so convicted to pay to any person so deprived a

PART III.

sum of money equal to the fair value thereof. Provided that in any case in which it appears that any person has, before the making of an order for restitution, and without notice of the commission of the said offence, or reasonable grounds to suspect that such property had been improperly obtained or dealt with, acquired any interest, legal or equitable, in such property for any just or valuable consideration, such person shall be entitled to be heard upon any application made for restitution thereof, either personally or by counsel; and it shall be lawful for the Court, if it shall think fit, to attach as a condition precedent to the restoration of the said property, that the person convicted, or the person to whom restoration is ordered to be made, pay to the person who has acquired such interest such sum, or perform such other condition, as to the Court shall, having regard to all the circumstances, appear reasonable and just. If, upon the apprehension of any person so convicted as aforesaid, any money was taken from him, the Court may, in its discretion, order the same, or any part thereof, to be applied to or towards any payment ordered to be made by the person convicted under the provisions hereof.

Saving as
to negoti-
able

Nothing in this sub-clause shall extend (a) to any negotiable valuable security which any person

has either taken or discharged for any just or valuable consideration, and without notice or reasonable ground to suspect that the same had been properly obtained; (b) to any case in which any trustee, banker, merchant, attorney, factor, broker, or other agent, as such is entrusted with the possession of property or documents of title, or has the control over property by means of documents of title or otherwise.

PART III.
securities
and
property
entrusted
to agents.

(b) If the offender is convicted of any offence involving injury to the property of another, the Court may order the person convicted to pay to the owner of such property a sum of money equal to the value of the damage done.

Persons
convicted
of offence
involving
injury to
property
may be
ordered to
pay value
of damage
done.

(c) If the offender is convicted of any injury to the person of another, the Court may order the offender to pay to the person so injured (or if the injury has resulted in the death of the person injured, to the husband, wife, father, mother, child, or children of the person killed, or to any other relative of the deceased who, at the time of his death, was dependent upon him for support) some reasonable sum of money by way of satisfaction or compensation for any loss or injury sustained by him or them by reason of such offence.

Court may
order com-
pensation
to be paid
by person
convicted
of injury
to the
person.

Any such order may be made either in addition to or in substitution of any punishment which is hereby authorized to be inflicted.

Such
orders in
addition to
or substi-
tution of
other pun-
ishment.

693. When any such order as hereinbefore lastly

Certificate

PART III. provided is made, and the amount ordered by the Court has been duly paid in accordance with such order, the person against whom such order is made shall be entitled to receive from the proper officer of the Court a certificate, under the seal of the Court, setting forth such order and that the amount ordered has been duly paid, which said certificate shall, upon the production thereof, without any further proof, be a bar to any claim for damages or compensation for or in respect of the same matters against the same party.*

to be
granted
upon order
being
satisfied,
and to be a
bar to any
other
claim for
compensa-
tion for the
same
matter.

* These provisions as to compensation are, to some extent, an extension of the present law. By a recent statute (33 & 34 Vict. c. 23, s. 4), upon the conviction of any person for *felony*, the Court may award any sum of money, not exceeding 100*l.*, to be paid by the person convicted, by way of satisfaction or compensation *for any loss of property* sustained by any person through or by means of such felony. It is of the very highest consequence that the law should not hold out to private persons the temptation to procure, or endeavour to procure, a conviction from the hope of pecuniary gain. The above clause, however, leaves the question of compensation in the discretion of the Court; and inasmuch as the legislature has so recently expressly authorized the awarding of compensation for loss of property caused by a felony, it ought, in justice, to extend the provision to injuries caused to the person. It is certainly preferable that this should be effected by legislative enactment, rather than by the irregular system of "imparling" a prosecutor, which is strongly condemned by Sir William Blackstone and other high authorities.

CHAPTER XXI.

COSTS.

694. ANY Court before whom any person is prosecuted or tried for any offence against this Code may order (a) payment to the prosecutor of his costs and expenses of such prosecution and trial; (b) payment to the prosecutor and to any or every witness attending such trial upon summons or subpoena, whether on behalf of the prosecution or for the defence, of such sums of money, by way of expenses and compensation, as the Court shall deem reasonable and sufficient to reimburse and compensate them severally for the expenses, trouble, and loss of time they have incurred in attending before the magistrate or justice upon the preliminary inquiry and upon the trial.

695. The amount of such costs, expenses, and compensation, both in respect of attending at the preliminary inquiry and upon the trial, shall be ascertained by the proper officer of the Court, according to the Rules from time to time to be made and in force under the provisions of this Code; but no sum, by way of expenses or compensation for attend-

PART III.
Orders for
costs.

Amount
payable,
by whom
and how
ascertained.

PART III. ing at any preliminary inquiry, shall in any case be allowed, except the same has been certified to be paid by the committing magistrate or justice under the provisions hereof. The certificate given by any such magistrate or justice, so far as the same fixes the amount to be allowed to any witness for his expenses and loss of time in attending before him, shall not necessarily be conclusive; but the sum proper to be allowed and paid shall nevertheless be ascertained by the officer of the Court: provided that no greater sum than is mentioned in such certificate shall in any case be allowed or paid to any person named therein.*

* These clauses, so far as they relate to the expenses to be allowed to witnesses for the prosecution, are in strict conformity with the present law, except that they would confer upon the Court before whom any person is tried for any offence against this Code, a discretionary power to grant costs and expenses to witnesses in the case of every offence; whereas at present there is no power to do so in the case of a few excepted misdemeanours. As regards witnesses for the defence, prior to 1867 the Court had no power, discretionary or otherwise, to allow them any expenses, and much hardship and injustice was the result. The witnesses for the prosecution, in every case of felony and in most misdemeanours, were paid by the county; an accused in humble circumstances was oft-times unable to call witnesses for his defence solely by reason of poverty.

There was no power given to a magistrate, as in the case of the witnesses for the prosecution, even to bind over witnesses for a prisoner to attend and give evidence at the trial, so that the only mode of securing their attendance to testify in favour of an accused was by the process of subpoena—a process, with its incident of conduct-money, often sufficiently costly to be quite beyond the means of a poor prisoner.

It is due to the humanity of the late Recorder of London (Mr. Russell Gurney) that this reproach upon the administration of criminal justice was removed. In that year he introduced and carried through Parliament a useful Act, by which it is, *inter alia*, enacted that witnesses called by an accused, giving evidence in any way material to the case, or tending to prove the innocence of the accused, shall be dealt with in the same manner as witnesses for the prosecution, and, like them, bound by recognizance to attend and give evidence upon the trial; and that any person attending at the trial shall be entitled, in the discretion of the Court, to his reasonable

696. It shall be the duty of the officer of the Court, PART III.
 having ascertained the amount of costs or expenses
 payable to any person as hereinbefore provided, to Upon
 make out and deliver to the person entitled thereto, whom
 without fee, an order for payment of same. order for
costs to
be made.

Every such order shall be made upon the treasurer of the county or place where the trial takes place, who, upon production thereof, shall pay the amount

expenses for attending as a witness, in the same way as the witnesses for the prosecution.

It is worthy of remark, as illustrating the slowness with which really crying abuses are remedied in England—at least, when they affect the poorest and most humble classes—that upwards of forty years previous to Mr. Russell Gurney's Act the attention of the Legislature had been expressly directed to the question of costs in criminal cases, and imperfections in the law upon the subject redressed, but only in favour of the witnesses for the prosecution; that in 1848, when what was intended to be a complete code of law in reference to preliminary inquiries before justices in respect of indictable offences was passed, the same cynical disregard of fair play towards accused persons prevailed; and that when, three years later, the question of expenses to witnesses was again before Parliament, the witnesses for the prosecution were once more the subject of protection, and the dictates of justice and humanity towards accused persons were again utterly ignored.

Wise and beneficent, however, as Mr. Russell Gurney's measure has proved, it yet leaves unprovided for any save witnesses called by an accused prior to his committal for trial.

This has given rise to proceedings prolonged unnecessarily before the magistrate or justices, after it has been distinctly made known that a committal for trial had been decided upon and is inevitable; whilst it has left an accused in the same friendless condition as he was before, in the case of any witness, however important, who was, for any reason, not called and examined before the magistrate or justices, and whom it may be of the first moment to an accused to call upon his trial. This clause, taken in conjunction with clause 234, would effectually remedy this omission, and may be regarded merely as the necessary complement of Mr. Russell Gurney's Act. As it is not proposed to do more than put the witnesses for the defence upon the same terms of equality as the witnesses for the prosecution, it is not easy to understand how any just exception can be taken to these clauses, especially if the spirit of the old English aphorism, that it is better that ten guilty men should escape rather than that one innocent man should perish, still commends itself to the conscience of the nation.

PART III. mentioned therein to the person to whom payment is ordered, or to any one duly authorized in writing to receive the same on his behalf : provided that where the offence in relation to the trial for which the order is made was not committed within the district of the Court where the trial has taken place, such treasurer shall be entitled to be repaid the amount paid by him under any such order in manner following, that is to say :—

(a) If the offence was committed in any other county in England or Wales, by the treasurer of such county ; or if such offence was committed in any place of exclusive jurisdiction in England or Wales which does not contribute to the county rates, by the treasurer, overseer, or other officer having the collection and disbursement of any rate in the nature of a county rate levied within such place of exclusive jurisdiction ; or if no such rate is levied in such place, to the overseer or other officer having the collection and disbursement of any rate or fund for the relief of the poor in such place ; and in either case such treasurer or officer shall, upon production of the order, duly receipted, by the person to whom the amount named therein was payable, repay to the treasurer who made such payment the amount thereof, and be allowed the same in his accounts.

(b) If the offence was committed upon the high seas or in any foreign waters where the tide ebbs and flows and great ships fre-

quent, by the assistant to the counsel for the Admiralty, who shall repay to the treasurer who made such payment the amount thereof, upon production of the order, duly receipted, by the person to whom the amount named therein was payable ;

- (c) If the offence was committed on land out of England, by the Commissioners of Her Majesty's Treasury, who shall repay, half-yearly, to the treasurer who made such payment the amount thereof, upon production of the order, duly receipted, by the person to whom the amount named therein was payable.

697. Whenever any order is made, whether for uniting counties for the purposes of the trial of accused persons, or by reason of any other cause, other than the application of the accused, in consequence of which an accused is appointed to be tried elsewhere than in the county or place where, but for such order, he would in the ordinary course of events be tried, the High Court of Criminal Justice, or any Judge thereof, may, before the trial, grant a certificate upon production of which the Commissioners of Her Majesty's Treasury may order the sum named in such certificate, not exceeding in any one case the sum of twenty pounds, to be paid to such accused, or such person as he shall authorize in writing to receive the same, to cover any additional expenses occasioned to such accused by such change of place of trial.

Costs
where
place of
trial
changed.

698. Whenever any person is convicted of any Order for

PART III. offence against this Code, the Court before whom he is convicted may order him to pay the costs of the prosecution, either wholly or in part. Such order may be in addition to any sentence passed upon him for such offence.

Court may order money found on accused to be applied towards payment of costs. If, upon the apprehension of any person so convicted, any money was taken from him, the Court may, in its discretion, order the same, or any part thereof, to be applied to or towards the payment of any costs so ordered to be paid.

Prosecutor entitled to recover costs from an accused who pleads a justification to a charge of libel and fails to support same. Whenever any person is accused of having published a defamatory libel against any person, and the accused pleads a justification upon the ground that the same was true in fact and published for the public benefit, and upon the trial the jury find that issue against the accused and find him guilty upon the Act of Accusation, the prosecutor shall be entitled to recover from the accused the costs sustained by him by reason of such plea, even if the Court, in its discretion, does not see fit to order the accused to pay the costs of the prosecution generally.

Order for payment of costs by prosecutor. 699. Whenever any accused person, having been committed for trial accused of any offence against this Code, is acquitted, the Court before such person is tried may, if in its discretion it shall think fit, order any person by whom, in the opinion of the Court, the prosecution was instituted to pay to the accused his costs of and incident to defending himself upon such charge.

Accused entitled to costs upon acquittal of Whenever any person is tried upon an Act of Accusation, charged, under the provisions hereof, with having published a defamatory libel against

any person, and is acquitted by the jury, he shall be entitled, as of right, to recover from the prosecutor his costs of and occasioned by his defence to such accusation.

PART III.
charge of
publish-
ing a de-
famatory
libel.

700. Any order for payment of costs made under any of the provisions of this Code shall be in the nature of a judgment debt due from the person against whom such order is made, and the same, or any balance due in respect thereof, may be recovered from the person ordered to pay the same, in the same manner as any judgment debt may be recovered in civil proceedings. The provisions of any Act of Parliament for the time being in force, in relation to the wilful default in payment of judgment debts, shall apply and extend to all sums due from any person under any order for the payment of costs made under the provisions hereof.

Mode of
enforcing
order for
costs.

DISABILITIES UPON CONVICTION OF AN OFFENCE FOLLOWED BY A SENTENCE OF DEATH, PENAL SERVITUDE, OR IMPRISONMENT WITH HARD LABOUR.

701. Every person who is convicted of any offence against this Code, in respect of which he is sentenced to death, penal servitude, or imprisonment with hard labour, shall thereupon become incapable of holding any naval or military office, or any civil office under the Crown, or other public employment, or any ecclesiastical benefice; or of being elected, or sitting, or voting as a member of either House of Parliament, or of exercising any right of suffrage, or other parliamentary or municipal franchise whatever, in any part of the United Kingdom. Such

Every per-
son con-
victed of
an offence
for which
he is sen-
tenced to
death,
penal ser-
vitude, or
imprison-
ment with
hard
labour,
shall be-
come in-
capable of
holding
any naval
or military

PART III. incapacity respectively shall continue until such person has suffered the punishment to which he has been sentenced, or such other punishment as, by competent authority, may be substituted therefor, or until such conviction is reversed by due course of law, or until he receives a free pardon from the Sovereign.

If any such person holds any such office, employment, or benefice, or any place, office, or emolument, in any university, college, or other corporation, such office, benefice, employment, or place, shall be deemed vacant, unless such person receives a free pardon from the Sovereign within two months after such conviction, or at any subsequent period before such office, benefice, employment, or place, is filled up; or unless such conviction is reversed by due course of law.*

office, or
any civil
office
under the
Crown, or
other
public em-
ployment,
or any
ecclesias-
tical bene-
fice until
sentence
fulfilled or
reversed,
or a pardon
is granted.
If such
person
holds any
such office,
employ-
ment, or
benefice,
etc., same
to be
deemed
vacant
except in
certain
events.

* The 33 & 34 Vict. c. 23 (the statute which abolished forfeiture, etc., upon conviction for treason or felony) contains some other disabilities, and also provisions with reference to the management of the property of persons convicted of the above-mentioned offences. The former are, I think, of somewhat doubtful policy; and, as regards the latter, they are rarely enforced in practice.

PART IV.

JURY.

CHAPTER XXII.

QUALIFICATION, SUMMONING, AND REMUNERATION OF
JURORS.

702. A SPECIAL jury for the purpose of, and within PART IV.
the meaning of, this Code shall be composed of such Definition
persons as are, at the time appointed for this Code of special
coming into force, qualified and liable to serve upon jury.
the grand jury in any county in England or Wales.

703. A 'common jury for the purposes of, and Definition
within the meaning of, this Code shall be composed of common
of such persons as are, at the time appointed for jury.
this Code coming into force, qualified and liable to
serve as jurors upon the trial of issues, whether civil
or criminal.

704. A mixed jury within the meaning of this Definition
Code shall be composed of an equal number of special of mixed
and common jurors. jury.

705. Jurors of each class shall be entitled to Remu-
such remuneration respectively, when summoned neration
to try any person for any offence against this Code, of jurors.
as shall be authorized by Rules of Court to be from
time to time made and in force under the provisions
of this Code, with the sanction of the Treasury.

PART IV. 706. In all trials for any offence against this Code,

Number of twelve jurors shall be empanelled and sworn.
jury.

Special jury to consist of special jurors only. 707. A special jury shall, unless by consent of the parties, consist of special jurors only.

Jury to be sworn or make solemn affirmation. 708. Every juror shall, in every trial under the provisions of this Code, before the accused is given in charge to the jury, make oath separately by saying audibly: "I solemnly swear that I will well, truly, and impartially discharge my duty as a juror in this trial, and a true verdict give according to the evidence; and this I now call upon God to witness."

Provided that whenever any such juror shall allege that he entertains a conscientious objection to taking the oath hereby prescribed, or that such oath would not be binding upon his conscience, it shall be lawful for such juror to make a solemn affirmation in the words following, that is to say: "I do solemnly affirm and declare that I conscientiously object to take the oath prescribed by the Penal Code [*or that the oath prescribed by the Penal Code would have no binding effect upon my conscience*], and I do solemnly declare that I will well, truly, and impartially discharge my duty as a juror in this trial, and a true verdict give according to the evidence."

Verdict must be unanimous. 709. A unanimous verdict shall in all cases be required.

Judges to issue precepts to sheriff. 710. The High Court of Criminal Justice, or any Judge thereof, shall have power to cause jurors, whether special or common, to be summoned, and a jury, either special, common, or mixed, to be em-

panelled, for the trial of any person who is appointed PART IV.
 to be tried at any Court of Oyer and Terminer or
 Gaol Delivery; and may make such rules or orders,
 by precept or otherwise, upon the sheriff as may
 be necessary to procure the attendance of a sufficient
 number of special and common jurors for the trial
 of persons accused of any offence against this Code
 at any such Court.

711. It shall be the duty of the sheriffs respec- Duty of
sheriffs to
apply for
precepts.
 tively to apply for and procure such precepts or
 orders to be issued in sufficient time to enable them
 to summon a sufficient number of special and
 common jurors.

712. Every sheriff, upon the receipt of any Obedience
to precept.
 precept or order requiring him, under the provisions
 of this Code, to summon special or common jurors,
 shall summon qualified persons accordingly; and all
 such persons so summoned shall be bound to obey
 such summons, and give their attendance in ac-
 cordance therewith.

713. Jurors for the trial of persons appointed to Jurors at
quarter
sessions.
 be tried at any court of quarter sessions shall be
 summoned in manner now by law provided; and
 all and several the provisions of any existing statute
 in relation to such jurors shall continue in full force
 and effect, save when the contrary is hereby expressly
 enacted.

714. Any juror having been summoned under Fining
jurors for
non-atten-
dance.
 the provisions of this Code, and not being in
 attendance or not appearing when called, shall, if
 no sufficient excuse be proved to and allowed by

PART IV. the Judge presiding at the Court where such juror is required to attend, be fined, if a special juror, not less than ten pounds, and if a common juror, not less than two pounds. Such Judge is hereby authorized and required to impose any such additional fine or fines as he may, under the circumstances of any particular case, think necessary or proper, either for the purpose of compelling the attendance or as a penalty for the non-attendance of any juror or jurors; and he is hereby also empowered to direct, if he shall think fit, that any fine payable by any juror shall be applied in or towards the costs occasioned by the non-attendance of such juror.

Mode of
enforcing
fines.

715. Such Judge shall also cause to be made out and shall sign a certificate containing the name and address, as given upon the panel, of every juror upon whom he imposes any fine, with a statement of the amount of each fine, and shall, after the expiration of not more than twenty-eight nor less than fourteen days, cause the said certificate to be transmitted to the sheriff of the county wherein the Court at which such juror failed to attend was held. Such fine, if not paid to the sheriff within seven days after the same is demanded by writing served upon the person by whom such fine is due, or left at his place of abode or place of business, shall be levied by the sheriff by distress and sale of the goods and chattels of the person from whom such fine is due, or so much thereof as may appear reasonably necessary for the purpose; and the overplus, if any, resulting from any such sale after the

charges of such distress and sale have been deducted, PART IV.
shall be returned to the person to whom such goods
and chattels belonged.

716. The fine upon any juror shall be levied Time within which fines to be levied.
within a period of not more than twelve weeks nor
less than six weeks after it has been so imposed;
and when levied shall be paid (subject to the pro-
visions as to costs in clause 714 of this Code) into Her
Majesty's Exchequer in such manner as the Treasury
may from time to time direct, and shall be carried to
the credit of the Consolidated Fund.

717. Whenever any fine is imposed upon any Notice required to be given to any juror fined for non-attendance.
juror, the officer whose duty it is to call such juror
at the Court to which he was summoned shall forth-
with, by letter, inform him of the imposition of the
fine, and likewise that he is at liberty, within six
days after the sending of such letter, to forward to
him, the said officer, an affidavit or solemn declara-
tion setting forth any matter of justification or
excuse he may desire to urge for his non-attendance.

718. Such officer shall, upon the receipt of any Remission of fines.
such affidavit or declaration, submit the same to
the Judge by whom the fine was imposed, and
who shall have power to remit such fine, either
wholly or in part, if he shall think proper so to do.

719. No juror, whether special or common, shall No juror to be liable to fine for non-attendance unless summons served six clear days
be liable to any penalty for non-attendance on any
jury, unless the summons requiring him to attend
be duly served six clear days, at least, before the day
on which he is required to attend; but no longer
period than such six clear days shall in any case be

PART IV. required between the service of the summons and the first day on which the juror is required to attend.
before-hand.

720. Every sheriff who summons any jurors shall, not less than seven days before the date on which such jurors are required to attend, cause two separate panels to be printed, containing the names, alphabetically arranged and numbered, and the places of abode and occupations or descriptions of the special and common jurors respectively so summoned; and shall forthwith thereupon transmit, together with the original panels duly signed, a sufficient number of printed copies of each of such panels to the officer of the Court at which such jurors are required to attend. A copy of such panels shall be kept in the office of such sheriff, and be open for inspection by any person, without the payment of any fee. A like copy shall also be exhibited in some conspicuous place at the Court at which the jurors comprised in such panels respectively are summoned to attend, prior to the commencement of and throughout the holding of the session at which such jurors are to serve.

721. Whenever jurors are summoned to attend for the trial of accused persons at any Court of Oyer and Terminer or Gaol Delivery from different counties, it shall be the duty of the officer of the Court at which such jurors are required to attend, upon receipt of the panels of special and common jurors summoned by the respective sheriffs of such counties, to make or cause to be made out from the said several panels two chief panels—one containing the names, address, and occupation or description of

every juror contained in the several special jury panels returned by the said sheriffs respectively, arranged alphabetically and numbered in consecutive order; and the other containing the names, address, and occupation or description of every juror contained in the several common jury panels returned by the said sheriffs respectively, arranged in alphabetical order and numbered consecutively. And such chief panels respectively, and not the separate panels from which the same are made up, shall be deemed to be the jury panels within the true intent and meaning of clauses 301, 307, and 722 of this Code. The said chief panels shall be exhibited in some conspicuous place at the Court at which the jurors comprised therein are summoned to attend, prior to the commencement of and throughout the holding of the session at which such jurors are to serve.

PART IV.

Publica-
tion of
chief
panels

722. On the trial of any person under the provisions of this Code, a copy of the panel or panels, with the names of the jurors by whom any Act of Accusation is tried distinctly marked, shall be annexed to every such Act of Accusation at or before the time of trial.

Copy of
panel to be
annexed
to every
Act of
Accusa-
tion.

723. The names, place of abode, and description of every juror who is at any time summoned to attend at any Court under the provisions hereof shall be written or printed on distinct pieces, all as nearly as may be of the same size and shape, of parchment, card, or paper, with the addition of the number set against each name on the panel, the special and common jurors respectively being kept separate and distinct. Such pieces of parchment, card, or paper

Jurors'
names for
ballot.

PART IV. shall be delivered by the sheriff to the officer of the Court having the duty of calling such jurors, and shall be put by him into ballot boxes to be provided for that purpose.

Balloting
for jurors
by officers.

724. On the trial of any person under the provisions of this Code, the jurors, whether special or common, shall be respectively taken by ballot, subject to the right of challenge as hereinbefore provided; and subject also to such arrangements as the Judge shall think fit to authorize for the purpose of relieving the jurors, as far as may be, from unnecessary attendance, or for distributing the whole amount of actual service in the jury box to be rendered by the jurors summoned as equally as may be among such jurors.

Same jury
may try
several
Acts of
Accusa-
tion in
succe-
sion.

Viewers to
be called
first.

725. Provided always that the same jurors who have tried any issue may, subject to the aforesaid right of challenge, try any number of Acts of Accusation in succession; and provided also that, in any case in which a view or inspection has been had, the jurors who have had such view or inspection shall be called first.

Limitation
as to
service as
a juror.

726. No person shall be summoned to serve on any jury, whether special, common, or mixed, more than once in any one year, unless all the jurors upon the list in the class to which the juror summoned respectively belongs have been already summoned to appear during such year.

Court or
Judgemay
direct trial
to be had
before a
special or
mixed

727. The High Court of Criminal Justice, or any Judge thereof, may, on the application of either the prosecutor or the accused, make an order that any Act of Accusation appointed to be tried in any Court

of Oyer and Terminer or Gaol Delivery, be tried by PART IV.
 a special or a mixed jury. Such order may be made jury in
certain
cases.
 at any time after the committal and before the trial
 of the accused ; but no such application shall be made
 by either side without notice in writing to the other,
 who shall be entitled to be heard thereon, either per-
 sonally or by counsel or solicitor ; and no order shall,
 in any case, be made for the trial of any accused
 person by a special jury, except with the consent of
 such accused.

728. In any case in which a trial is directed to be Provision
in a case
involving
scientific
evidence
of excep-
tional
difficulty.
 tried before a special or mixed jury, and such trial
 involves scientific evidence of more than ordinary
 difficulty, the High Court of Criminal Justice, or any
 Judge thereof, may, with the consent both of the
 prosecutor and of the accused, order that the jury be
 in part composed of jurors possessing special scientific
 knowledge. Such jurors shall be selected and sum-
 moned in such manner, and shall be entitled for their
 attendance as jurors to such remuneration, as shall
 be prescribed by Rules of Court to be from time to
 time made and in force under the authority of this
 Code.

PART V.

PROTECTION OF PERSONS, ACTING
UNDER THIS CODE.

CHAPTER XXIII.

PROTECTION OF PERSONS ACTING UNDER THIS CODE.

729. ANY prosecution against any person whatsoever, for anything which he was authorized to do under the provisions of this Code, or which he did under a belief, upon reasonable ground and in good faith, that the same was authorized by this Code, shall be tried in the county where the act complained of was done, unless the person proceeded against otherwise consents in writing; or unless the High Court of Criminal Justice, or a Judge thereof, shall, for sufficient cause shown, otherwise direct.

PART V.
Provision as to prosecution for anything done under the authority of this Code, or a reasonable belief that same so authorized.

730. No such prosecution shall be commenced after the expiration of twelve calendar months next after the act upon which such prosecution is based, or if more than one, the last of such acts, was committed.

Limitation of time for commencement of prosecution.

731. No action or plaint shall be maintainable against any person whatsoever, for or in respect of the commission of any act which such person had authority to do under the provisions of this Code, unless such act shall be shown to have been done, and the jury (or the Judge, where the action or plaint is tried before a Judge without a jury) shall find as a fact that such act was in fact done, either from actual malice or without reasonable and probable cause.

What conditions requisite to maintain an action for anything done under the authority of this Code.

PART V. 732. No action or complaint shall be maintainable against any person whatsoever, for or in respect of the commission of any act which the jury (or the Judge, where the action is tried before a Judge without a jury) shall find as a fact was committed under a belief, entertained reasonably and in good faith by the person committing the same, that such act was authorized by the provisions of this Code, unless one calendar month at least before the commencement of such action, a notice in writing of such intended action shall have been delivered to the person against whom such action is brought, or to a solicitor or agent nominated by him to receive the same, or shall have been left at the usual place of abode of the person against whom such action is brought. Such notice shall have legibly written thereon the name and place of abode of the person giving the same, or where the same is given by his solicitor or agent, the name and place of abode or business of such solicitor or agent.

In what Courts action for anything done or claimed to have been done under the authority of this Code may be brought. 733. Every action against any person whatsoever, for or in respect of anything done, or claimed reasonably and in good faith to have been done, under the provisions of this Code, may be commenced either in a superior Court or a County Court. Provided that when such action shall be commenced in a superior Court, it shall be tried in the county only where the act complained of, or if more than one either of the acts complained of, was committed, and when commenced in a County Court, every complaint in respect of any such act shall be issued out of the County Court within the district of which the act complained of,

or if more than one either of the acts complained of, was committed, unless the Court in which such action or plaint is proposed to be commenced or issued, or a Judge thereof, shall, upon some reasonable cause shown, otherwise direct, or unless the defendant shall in writing consent. No such action shall be commenced, or plaint sued out, unless the same be commenced or sued out within six calendar months next after the act complained of (or if more than one, the last of such acts) was committed, except by leave of the High Court of Justice, or of a Judge thereof, where the action is intended to be commenced in a superior Court, or, where the plaint is intended to be issued out of a County Court, by leave of the Judge of such Court; in either case, upon some just cause shown and accounting satisfactorily for the delay which has taken place.

PART V.

Limita-
tion of
time for
bringing
same.

734. Any defendant in any such action brought in a superior Court may by his statement of defence allege generally that the act complained of was an act done, or claimed reasonably and in good faith to have been done, under the provisions of this Code; and, upon such statement, may prove any special matter in his defence.

Defendant
may plead
that act
com-
plained of
was done,
or claimed
to be done,
under the
provisions
of this
Code.

735. Whenever it is enacted, under the provisions hereof, that no action or plaint shall be brought or issued under particular circumstances, or except within a prescribed time limited for that purpose, or except in a particular county or district only, or subject to any other special condition, if any such action or plaint shall, notwithstanding such prohibition, be brought by any person, or if such action

Court or
Judge may
stay pro-
ceedings
in action
brought
where pro-
hibited by
this Code.

PART V. or plaint shall be commenced or issued or sued out after the expiration of the time so limited, or in any county or district where the same is not authorized to be brought or heard, or otherwise in violation of any express provision herein contained, it shall be lawful for the Judge of the Court in or out of which the same shall be brought or issued, upon an application by or on behalf of the defendant, supported by such evidence, either by affidavit or otherwise, as such Judge shall require, and upon notice thereof to the plaintiff, or his solicitor or agent, to stay all proceedings in such action, either absolutely or conditionally, and either with or without costs, as to such Court or Judge shall seem fit; and thereupon such action shall be stayed, and such costs shall be paid by the person ordered to pay the same, or, in default of payment, may be recovered in the same manner as, by the provisions of any statute for the time being in force, any order of like or similar character made by the Court or Judge making such order may be enforced.

Notice of
special
defence
where
action
com-
menced in
County
Court.

736. Any defendant in any plaint depending in any County Court may give notice to the registrar of such Court of his intention to set up by way of defence, upon the hearing thereof, that the act complained of was an act done, or claimed reasonably and in good faith to have been done, under the provisions of this Code. Such notice shall be given five clear days at least before the day of hearing; and if the defendant has given such notice, he may prove any special matter in his defence. Such defence shall be deemed to be a "special defence" within the meaning of an Act of Parliament passed in the ninth and

tenth years of Her present Majesty, chapter ninety-five; and any Rule or Rules now or hereafter for the time being in force under the authority thereof, and all and several the provisions in such Act contained, or in any Rules now or hereafter for the time being in force under the authority thereof, relating to special defences shall be applicable to a defence under this clause.

737. Any person whatsoever who is threatened with any action, whether in the superior Court or in any County Court, for anything done, or claimed reasonably and in good faith to have been done, under the provisions hereof, may tender a sum of money to the person complaining, or to his solicitor or agent, by way of amends for the act complained of, before action brought or plaint issued; or where such action is brought in a superior Court, may, by way of such amends, pay a sum of money into Court after such action has been commenced, and at any time before issue has been joined; or at any subsequent period, by leave of the Court in which such action is brought, or any Judge thereof, upon such terms as to costs or otherwise as such Court or Judge shall deem just and reasonable; and when a plaint is issued out of any County Court in respect of any such act, the defendant may, not less than five clear days before the day appointed for hearing such plaint, pay into Court a sum of money by way of amends as aforesaid. And if, in either of the cases herein mentioned, notwithstanding such tender or payment into Court, the plaintiff shall proceed to trial or hearing; then, in either case, if the jury (or the Judge, if the action or plaint is tried or heard before a Judge without a jury)

PART V.

Tender of
amends.

PART V. is of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into Court, the verdict shall be entered for the defendant.

Tender
may be
pleaded as
a defence;
but
amount
thereof
must be
paid into
Court.

738. Whenever, under the provisions hereof, a tender is made, and refused by the person complaining, and thereafter an action is commenced or a plaint is issued, the defendant who desires to rely upon such tender by way of defence, or as part of his defence, shall, (a) when the action is commenced in a superior Court, state in his statement of defence the fact of such tender having been made, and shall pay into Court in the action the sum so tendered, and, where such tender and payment are made in respect of part only of the alleged causes of action, shall specify in respect of what part thereof such tender was made and such money is paid into Court; (b) when a plaint is depending in a County Court, the defendant thereto, within five clear days at least before the day of hearing, shall give notice to the registrar of the County Court of his intention to set up by way of defence, or part defence, upon the hearing thereof, the fact of such tender having been made, and shall pay into Court the sum so tendered, and shall, where such tender and payment are intended to apply to part only of the alleged complaint, in such notice specify in respect of what part thereof such tender was made and such money is paid into Court. Such defence shall be deemed to be a special defence within the meaning of an Act of Parliament passed in the ninth and tenth years of the reign of Her present Majesty, chapter ninety-five; and any Rule or Rules now or hereafter for the time being in force under

the authority thereof, and all and several the provisions in such Act contained, or in any Rules now or hereafter for the time being in force under the authority thereof, relating to special defences shall be applicable to a defence under this clause. PART V.

739. In any case in which any money is paid into Court under the provisions of the last preceding clause, either by way of payment into Court simply, or in conjunction with a defence of "tender," such money shall be deemed to be paid in in respect of the whole cause of action or complaint, unless it is expressly stated, in accordance with the provisions of such clause, to be paid in in respect of part only of such action or complaint.

If money paid into Court in respect of part only of cause of action, defendant must so state.

740. No sum of money paid into Court under the provisions of clauses 737 and 738 hereof shall be paid out, except by leave of a Judge of the Court in which such money is paid in, or by consent in writing of the several parties to the action.

Money paid into Court not to be paid out without Judge's order or consent of all parties.

741. Whenever, under the provisions hereof, any money is paid into Court under a defence of "tender," and the plaintiff elects to accept the same in full satisfaction of the damages claimed by him against the person paying in the same, he may, upon notice to the person paying in the same, or his solicitor or agent, obtain an order from a Judge of the Court in which the action or plaint is pending, that such money be paid out to him, subject to such order as to payment of costs on either side as such Judge shall, having regard to all the circumstances, order; and the same shall, subject as aforesaid, be paid out in accordance with such order.

Procedure where plaintiff elects to accept payment into Court under a defence of tender in satisfaction.

PART V. 742. Any such Judge may, upon any application under the last preceding clause, order that the defendant shall pay to the plaintiff, or that the plaintiff shall pay to the defendant, the taxed costs of the action or plaint, or any part thereof to be taxed, as he shall think reasonable.

Provision as to costs in that case. 743. If such Judge shall order that the plaintiff pay costs to the defendant, the sum of money paid by such defendant into Court, or so much thereof as shall be sufficient to satisfy the defendant's costs so ordered to be paid, shall be paid out of Court to the defendant, and the residue (if any) shall be paid to the plaintiff.

Money paid into Court may be applied towards any costs ordered to be paid to defendant by plaintiff. 744. In any case in which the Judge orders that the defendant pay costs to the plaintiff, or that the plaintiff pays costs to the defendant, the amount of costs so ordered to be paid may be recovered in the manner in which, by the provisions of any law for the time being in force, any order of a like or similar character made by the Court or Judge making such order may be enforced.

Mode of enforcing payment of costs. 745. Whenever, under the provisions hereof, money is paid into Court as and by way of amends after action brought, and not under a defence of "tender," and the plaintiff elects to accept the same in full satisfaction of the damages claimed by him against the person paying in the same, he may, upon notice to the person paying in the same, or his solicitor or agent, obtain an order that such money be paid out of Court to him; and furthermore, when the amount so paid into Court exceeds ten pounds, if the action is in a superior Court, and whatever amount if in a

Procedure where plaintiff elects to accept a sum paid into Court as amends in satisfaction.

County Court, that the defendant pay to him his costs of such action, to be taxed; and thereupon the said action shall be determined, and any order so made shall be a bar to any other action or plaint by or on behalf of the same plaintiff against the same defendant for the same cause. Such costs may be recovered in the like manner as is hereinbefore provided in the case of costs ordered to be paid by a Judge of the Court in which the action is brought.

PART V.

746. Whenever a plaint is issued out of the County Court, and served upon any person claiming damages against him, for or in respect of any act done, or claimed to have been done, reasonably and in good faith, under the provisions hereof, such person may apply to the High Court of Justice, or a judge thereof, sitting either in Court or Chambers, to remove the action into the High Court of Justice for trial, and such Court or Judge may make such order and upon such terms as to such Court or Judge shall seem just and reasonable.

Removal of action commenced in County Court for trial in the High Court of Justice.

747. Whenever any action or other proceeding is pending in any Court, or is about to be instituted, or is in good faith contemplated, it shall be lawful for any Judge of the High Court of Criminal Justice, in his discretion, upon application, to be made either *ex parte*, or upon summons in Chambers, supported by such evidence, by affidavit or otherwise, as such Judge shall think necessary, to direct that any person affected thereby, his solicitor or agent, shall be at liberty to inspect or be furnished with a copy of or extract from, or to inspect and be furnished with a copy of or extract from, any warrant, charge-

Order may be made in certain cases for inspection and copy of any warrant, charge-sheet, information, or deposition under the provisions of this Code.

PART V. sheet, information, statement, or deposition issued or taken under any provision of this Code, upon such terms as to such Judge shall seem fit; and upon the production of any such order to the person in whose custody the said documents or any or either of them are, such person shall give such inspection, copy, or extract as shall be directed to be given by and in accordance with the said order.*

* This clause is new. It would enable any person, *e.g.* against whom a false charge has been preferred, and who has either taken, or has it in contemplation to take, steps to vindicate his character, to inspect and be furnished with a copy of the proceedings taken against him, in any case in which a Judge, in his discretion, considers the application reasonable.

PART VI.

REPEAL OF STATUTES.

CHAPTER XXIV.

STATUTES REPEALED.

748. The several Acts set out and described in the first and second columns in the schedule hereto annexed shall, from and after the date appointed for the coming into force of this Code, be repealed, so far as relates to England and Wales, but not otherwise, to the extent stated in the third column of the said schedule.

PART VI.
Extent of
repeal.

Provided that whenever any enactment hereby repealed, either wholly or in part, applies to or has been extended to any part of the Sovereign's dominions out of the United Kingdom, by any Act of the United Kingdom or otherwise, the same shall not be repealed as to that part of the Sovereign's dominions.

Proviso.

Every offence which has been committed, either wholly or in part, against any of the said Acts or parts of Acts hereby repealed, before the time appointed for the coming into force of this Code, shall be dealt with, inquired of, tried, determined, and punished, and every penalty in respect of any such offence shall be recovered, in the same manner as if the said Acts or parts of Acts had not been repealed ;

PART VI. subject, however, to the express provision contained in Clause 91 of this Code in relation to procedure. Such repeal shall not affect the validity or otherwise of any act duly done, or of any warrant or other instrument duly made or granted, before the time of coming into force of this Code; but the same shall respectively continue and be of the same force and effect as if the said Acts or parts of Acts had not been repealed; and, subject as aforesaid, every right, title, liability, privilege, and protection, acquired or existing, in respect of any matter or thing committed or done before the coming into force of this Code, shall continue and be of the same force and effect as if the said Acts or parts of Acts had not been repealed; and every action, prosecution, and other proceeding which has been commenced before the time appointed for the coming into force of this Code, or which shall thereafter be commenced, in respect of any such matter or thing, may, subject as aforesaid, be prosecuted, continued, and defended in the same manner as if the said Acts or parts of Acts had not been repealed.

**ENACTMENTS REFERRED TO IN CLAUSE 748, REPEALED
HEREBY EITHER WHOLLY OR IN PART.**

Date of Statute.	Title of Statute.	Extent of Repeal.
3 Edw. 1, c. 25	None shall commit champerty to have part of the thing in question ...	The whole Act
3 Edw. 1, c. 34	None shall report slanderous news whereby discord shall arise ...	The whole Act
13 Edw. 1, st. 1, c. 49	The penalty for buying the title to land depending in suit ...	The whole Act

Date of Statute.	Title of Statute.	Extent of Repeal.
23 Edw. 1 *	<i>De frangentibus prisonam</i>	The whole Act
25 Edw. 3, st. 5, c. 2	A declaration which offences shall be adjudged treason	The whole Act
2 Rich. 2, st. 1, c. 5	The penalty for telling slanderous lies of the great men of the realm ...	The whole Act
5 Rich. 2, st. 1, c. 8	The penalty where any doth enter into lands where it is not lawful, or with force	The whole Act
12 Rich. 2, c. 11	For punishing reporters of lies against peers and great officers	The whole Act
15 Rich. 2, st. 1, c. 2	For confirming or amending former statutes respecting riots and forcible entries	The whole Act
4 Hen. 4, c. 8	A special assize shall be maintainable against a disseisor with force ...	The whole Act
1 Hen. 5, c. 5	An Act that in every original writ in which an exigent should be awarded shall be written certain additions...	The whole Act, so far as the same relates to criminal matters
8 Hen. 6, c. 9	For confirming and amending former statutes respecting forcible entries	The whole Act
32 Hen. 8, c. 9	The Bill of Bracery and Buying of Titles	The whole Act
5 & 6 Edw. 6, c. 11	An Act for the punishment of divers treasons	The whole Act
5 & 6 Edw. 6, c. 16	An Act against the buying and selling of offices	The whole Act
1 & 2 Phil. and Mary, c. 13	An Act for affirming an order to justices of the peace for the bailment of prisoners	The whole Act
5 Eliz. c. 9	An Act for the punishment of such persons as shall commit any wilful perjury	The whole Act
8 Eliz. c. 2	An Act whereby the defendant may recover his costs, being wrongfully vexed	In part, i.e. s. iv.
18 Eliz. c. 5	An Act to redress disorders in common informers upon penal laws ...	The whole Act
39 Eliz. c. 4	An Act for the punishment of rogues, vagabonds, and sturdy beggars ...	The whole Act
21 Jac. 1, c. 15	An Act to enable Judges and justices of the peace to give restitution of possession in certain cases ...	The whole Act
13 Car. 2, c. 5	An Act against tumults, and dis-	

* Lord Coke treats this as 1 Edw. 2 (*vide* 2 Inst. 589); and it is so printed in Ruffhead's edition of the Statutes.

Date of Statute.	Title of Statute.	Extent of Repeal.
7 & 8 Will. 3, c. 3	orders, upon pretence of preparing and presenting public petitions, or other addresses to His Majesty or the Parliament An Act for regulating trials in cases of treason and misprision of treason	The whole Act The whole Act, except s. xi. *
9 & 10 Will. 3, c. 32 †	An Act for the more effectual suppressing of blasphemy and profaneness	The whole Act
11 & 12 Will. 3, c. 7	An Act for the more effectual suppressing of piracy	The whole Act, except s. xvii. ‡
7 Anne, c. 12	An Act for preserving the privileges of ambassadors and other public ministers of foreign princes and states	The whole Act
1 Geo. 1, st. 2, c. 5	An Act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters	The whole Act, except in so far as it prescribes the duty of any justice of the peace, sheriff, under-sheriff, mayor, bailiff, or other head officer, to make proclamation; and the form of such proclamation; and except also s. 6. This section provides for compensation in case of damage to a church by rioters
4 Geo. 1, c. 11	An Act for the further preventing robbery, burglary, and other felonies, and for the more effectual transportation of felons, and unlawful exporting of wool, and for declaring the law upon some points relating to pirates	The whole Act
8 Geo. 1, c. 24	An Act for the more effectual suppressing of piracy	The whole Act, except ss. 2 § and 5
12 Geo. 1, c. 29	An Act to prevent frivolous and vexatious arrests	s. 4 ¶

* This section provides that, upon the trial of any peer or peeress for treason or misprision of treason, all peers are to be summoned twenty days before trial, and to take certain oaths.

† Sometimes printed as c. 35.

‡ This section enacts that seamen, deserting their ships abroad, shall forfeit all wages then due.

§ This section provides for a forfeiture of any ship fitted out to trade with pirates, and of the goods and merchandise therein.

|| This section provides for compensation to seamen maimed in fighting a pirate.

¶ The other clauses of this statute have no relation to criminal law or procedure.

Date of Statute.	Title of Statute.	Extent of Repeal.
2 Geo. 2, c. 25	An Act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury; and to make it felony to steal bonds, notes, or other securities for payment of money ...	The whole Act
16 Geo. 2, c. 31	An Act for the further punishment of persons who shall aid or assist prisoners to attempt to escape out of lawful custody ...	
25 Geo. 2, c. 36	An Act for preventing thefts and robberies, and for regulating places of public entertainment, and punishing persons keeping disorderly houses* ...	The whole Act
25 Geo. 2, c. 37	An Act for better preventing the horrid crime of murder ...	The whole Act
12 Geo. 3, c. 24	An Act for the better securing and preserving His Majesty's dockyards, magazines, ships, ammunition, and stores ...	The whole Act
33 Geo. 3, c. 67	An Act for better preventing offences in obstructing, destroying, or damaging ships or other vessels, and in obstructing seamen, keelmen, casters, and ship carpenters from pursuing their lawful avocations ...	The whole Act
36 Geo. 3, c. 7	An Act for the safety and preservation of His Majesty's person and government against treasonable and seditious practices and attempts ...	The whole Act
37 Geo. 3, c. 70	An Act for the better prevention and punishment of attempts to seduce persons serving in His Majesty's forces, by sea or land, from their duty and allegiance to His Majesty, and to incite them to mutiny or disobedience ...	The whole Act

This section involves, probably, one of the most extraordinary provisions in the whole statute book, authorizing, as it does, a sentence of seven years' transportation *without trial* and after a summary inquiry by a Judge.

* This statute contains important provisions in relation to bawdy-houses, particularly s. viii., which enacts who is to be deemed the keeper of a house of this character. If this statute should be repealed in its entirety, and my suggestion adopted, to treat the suppression of these houses as matters of police, and to bring them within the summary jurisdiction of magistrates and justices in petty sessions, subject to a right of appeal, as well as subject to the power of injunction, it would be necessary that enactments to that effect should be passed into law by the legislature.

Date of Statute.	Title of Statute.	Extent of Repeal.
37 Geo. 3, c. 123	An Act for more effectually preventing the administering or taking of unlawful oaths	The whole Act
38 Geo. 3, c. 52	An Act to regulate the trial of causes, indictments, and other proceedings which arise within the counties of certain cities and towns corporate within this kingdom	
		The whole Act, so far as it relates to criminal matters
39 & 40 Geo. 3, c. 93	An Act for regulating trials for high treason and misprision of treason	The whole Act
39 & 40 Geo. 3, c. 94	An Act for the safe custody of insane persons charged with offences ...	The whole Act
48 Geo. 3, c. 58	An Act for amending the law with regard to the course of proceeding on indictments and informations in the Court of King's Bench in certain cases	The whole Act
51 Geo. 3, c. 100	An Act to amend an Act passed in the thirty-eighth year of His present Majesty's reign, intituled, etc.	The whole Act*
52 Geo. 3, c. 104	An Act to render more effectual an Act passed in the thirty-seventh year of His present Majesty, for preventing the administering or taking unlawful oaths	The whole Act
52 Geo. 3, c. 155	An Act to repeal certain Acts and amend other Acts relating to religious worship and assemblies, and persons teaching and preaching thereon	s. 12 †
54 Geo. 3, c. 146	An Act to alter the punishment in certain cases of high treason ...	The whole Act
57 Geo. 3, c. 6	An Act to make perpetual certain parts of an Act of the thirty-sixth year of His present Majesty, etc.	The whole Act
57 Geo. 3, c. 19	An Act for the more effectually pre-	

* This statute contains a provision for the execution of sentences in certain cases, either in the county where the offence was committed, or in the county of the city or town corporate where the offence was committed (s. 1). A *general* provision of a similar character ought to be included in this draft Code.

† This section is directed against the disturbance of religious assemblies. The offence is triable only at general or quarter sessions, and the punishment prescribed is a penalty of forty pounds. It would be sufficient to make this offence punishable upon summary conviction.

Date of Statute.	Title of Statute.	Extent of Repeal.
	venting seditious meetings and assemblies	The whole Act, so far as the same is unrepealed
60 Geo. 3 & 1 Geo. 4, c. 1	An Act to prevent the training of persons to the use of arms and to the practice of military evolutions and exercise	The whole Act
60 Geo. 3 & 1 Geo. 4, c. 4	An Act to prevent delay in the administration of justice in cases of misdemeanour	The whole Act
1 & 2 Geo. 4, c. 41	An Act for giving greater facility in the prosecution and abatement of nuisances arising from furnaces used, and in the working of steam-engines	The whole Act
1 & 2 Geo. 4, c. 88	An Act for the amendment of the law of rescue	The whole Act
3 Geo. 4, c. 114	An Act to provide for the more effectual punishment of certain offences by imprisonment with hard labour	The whole Act
3 Geo. 4, c. 126	An Act to amend the general laws now in being to regulate the turnpike roads	ss. 110 and 128*
4 Geo. 4, c. 48	An Act for enabling Courts to abstain from pronouncing sentence of death in certain capital felonies	The whole Act
5 Geo. 4, c. 83	An Act for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of Great Britain called England	ss. 5, 9, and 10 †
5 Geo. 4, c. 84	An Act for the transportation of offenders from Great Britain	The whole Act
6 Geo. 4, c. 20	An Act for consolidating and amending the laws relative to jurors and juries	ss. 29 ‡ and 61 §
7 Geo. 4, c. 64	An Act to consolidate and amend several Acts relating to the royal hospitals for soldiers at Chelsea and Kilmainham	ss. 25-28, and s. 35 so far as the same relates to indictments; and s. 38

* These sections refer respectively to the non-repair of a turnpike road, at present an indictable offence, and to the act of maliciously destroying a turnpike road.

† These sections relate to incorrigible rogues; and, if repealed, substituted clauses should be included in a Code dealing with summary offences.

‡ This section enacts that the king shall only challenge for cause; and also limits the number of peremptory challenges for a prisoner in cases of felony.

§ This section relates to embracery.

Date of Statute.	Title of Statute.	Extent of Repeal.
7 Geo. 4, c. 16	An Act for improving the administration of justice in England ...	The whole Act *
7 & 8 Geo. 4, c. 28	An Act for the further improving the administration of justice in criminal cases in England ...	The whole Act †
9 Geo. 4, c. 69	An Act for the more effectual prevention of persons going armed by night for the destruction of game	The whole Act
11 Geo. 4 & 1 Will. 4, c. 70	An Act for the more effectual administration of justice in England and Wales	s. 9, † and s. 19 so far as the same relates to criminal matters §
2 & 3 Will. 4, c. 53	An Act for consolidating and amending the laws relating to the payment of army prize-money ...	ss. 45, 46, and 49
4 & 5 Will. 4, c. 36	An Act for the establishing a new Court for the trial of offences committed in the metropolis and parts adjoining	The whole Act, except ss. 5- 10 and s. 14 ¶
4 & 5 Will. 4, c. 67	An Act for the abolishing capital punishment in case of returning from transportation	The whole Act
5 & 6 Will. 4, c. 33	An Act for preventing the vexatious removals of indictments into the Court of King's Bench	The whole Act
5 & 6 Will. 4, c. 50	An Act to consolidate and amend the laws relating to highways	ss. 95 and 98 **

* Section 30 of this statute provides for payment by the sheriff of the county of compensation to the family of any man killed in attempting to apprehend certain offenders. If this Act should be repealed in its entirety, a somewhat similar provision should be included in the Code.

† Section 13 contains a provision as to the effect of a free or conditional pardon from the Crown, which should either remain unrepealed, or be embodied in this Code.

‡ As to pronouncing judgments in trials for felonies or misdemeanours in the King's Bench.

§ The remainder of the Act relates to civil procedure.

|| These sections relate to the taking of false oaths, and personation, and forgery; the remainder of the statute relates to matters which its title sufficiently indicates.

¶ These sections relate to the appointment of places of confinement of prisoners, and kindred matters.

** These sections relate to proceedings by way of indictment in the case of disputed liability to repair highways. If repealed, a mode of procedure other than by indictment would require to be substituted.

Date of Statute.	Title of Statute.	Extent of Repeal.
5 & 6 Will. 4, c. 62	An Act to make other provisions for the abolition of unnecessary oaths	ss. 5, 12, and 21*
6 & 7 Will. 4, c. 86	An Act for registering births, deaths, and marriages in England ...	ss. 41 and 43 †
6 & 7 Will. 4, c. 111	An Act to prevent the fact of a previous conviction being given in evidence to the jury in the case before them, except when evidence to character is given ‡ ...	The whole Act
6 & 7 Will. 4, c. 114	An Act for enabling persons indicted of felony to make their defence by counsel or attorney... ..	The whole Act, except s. 2 §
7 Will. 4 & 1 Vict. c. 36	An Act for consolidating the laws relating to offences against the Post Office of the United Kingdom	The whole Act, except ss. 25-42 inclusive
7 Will. 4 & 1 Vict. c. 88	An Act to amend certain Acts relating to the crime of piracy	The whole Act
7 Will. 4 & 1 Vict. c. 90	An Act to amend the law relative to offences punishable by transportation for life	The whole Act
3 & 4 Vict. c. 54	An Act for making further provisions for the confinement and maintenance of insane prisoners	The whole Act
5 & 6 Vict. c. 38	An Act to define the jurisdiction of justices in general and quarter sessions of the peace	The whole Act
5 & 6 Vict. c. 51	An Act for providing for the further security and protection of Her Majesty's person	The whole Act
6 & 7 Vict. c. 96	An Act to amend the law respecting defamatory words and libel ...	ss. 3-8 inclusive ¶
7 & 8 Vict. c. 2	An Act for the more speedy trial of offences committed on the high seas	The whole Act

* These sections relate to the making of false declarations.

† These sections relate to destroying or falsifying registers of births, deaths, and marriages. They are repealed in part by 37 & 38 Vict. c. 88.

‡ This statute, if not actually repealed, is at least repealed by implication by 34 & 35 Vict. c. 112, s. 9.

§ This section gives a defendant the right of making his defence by counsel or attorney in the case of acts punishable upon summary conviction.

|| These sections do not relate in any way to indictable offences.

¶ Section 7 of this statute contains a provision in relation to giving evidence to rebut a *prima facie* case of publication by an agent. I am disposed, on further consideration, to think that a similar provision should be added to the clauses of this Code dealing with libel.

Date of Statute.	Title of Statute.	Extent of Repeal.
7 & 8 Vict. c. 29	An Act to extend an Act of the ninth year of King George IV., for the more effectual prevention of persons going armed by night for the destruction of game	The whole Act
8 & 9 Vict. c. 68	An Act to stay execution of judgment for misdemeanours upon giving bail in error	The whole Act
8 & 9 Vict. c. 109	An Act to amend the law concerning gaming and wages	s. 18 *
9 & 10 Vict. c. 24	An Act for removing some defects in the administration of criminal justice	The whole Act
10 & 11 Vict. c. 82	An Act for the more speedy trial and punishment of juvenile offenders ...	The whole Act
11 Vict. c. 12	An Act for the better security of the Crown and Government of the United Kingdom	The whole Act
11 & 12 Vict. c. 42	An Act to facilitate the performance of duties of justices of the peace out of sessions, within England and Wales, with respect to persons charged with indictable offences ...	The whole Act
11 & 12 Vict. c. 44	An Act to protect justices of the peace from vexatious actions for acts done by them in the exercise of their office	The whole Act, except in so far as the same relates to summary convictions and orders, and to any act done thereunder; or to any action brought, or threatened to be brought, in relation thereto
11 & 12 Vict. c. 46	An Act for the removal of defects in the administration of criminal justice	The whole Act
11 & 12 Vict. c. 78	An Act for the further amendment of the administration of the criminal law	The whole Act
12 & 13 Vict. c. 45	An Act to amend the procedure in courts of general and quarter sessions of the peace in England and Wales, and for the better advancement of justice in cases within the jurisdiction of those courts	s. 10 †

* This section is directed against cheating at play, an offence provided for by this Code.

† This section relates to the amendment of indictments.

Date of Statute.	Title of Statute.	Extent of Repeal.
13 & 14 Vict. c. 37	An Act for the further extension of summary jurisdiction in cases of larceny	The whole Act
14 & 15 Vict. c. 19	An Act for the better prevention of offences	The whole Act
14 & 15 Vict. c. 55	An Act to amend the law relating to the expenses of prosecutions, and to make further provision for the apprehension and trial of offenders in certain cases	The whole Act, except ss. 9-12 * and 14-17 † inclusive
14 & 15 Vict. c. 100	An Act for further improving the administration of criminal justice ...	The entire portion of the Act which is unrepealed
16 & 17 Vict. c. 30	An Act for the better prevention and punishment of aggravated assaults upon women and children, and for preventing delay and expense in the administration of certain parts of the criminal law	The whole of the Act which is unrepealed ‡
16 & 17 Vict. c. 32	An Act to make further provision for staying execution of judgment for misdemeanours upon giving bail in error	The whole Act

* These sections relate to the salary of clerks of the peace, etc.

† These sections relate to the appointment of a deputy assistant Judge at the Middlesex sessions.

‡ One chief source of confusion in our law arises from the system of including within a statute matter of an incongruous character. Thus, in the midst of an Act of Parliament dealing with subjects foreign to criminal law or procedure, may be found, here and there, penal enactments either created or repealed; some defect of procedure supplied; or a new rule of evidence enacted. In other statutes, professedly dealing with crime, a curious miscellany is frequently presented.

This statute, by no means one of the worst instances of this haphazard kind of legislation, nevertheless embraces matters of a widely differing character. Thus s. 1, since embodied in a later statute, gave justices power to convict summarily for an aggravated assault upon any woman or child. The remaining sections, nine in number, deal with matters having no relation to the initial section and little or no connection with each other; e.g. s. 2 relates to the power of a court of quarter sessions to declare a recognizance forfeited; s. 4 deals with a matter so widely different as the removal of indictments by *certiorari*; whilst s. 9 empowers a Secretary of State to order a prisoner to be brought up to give evidence.

Date of Statute.	Title of Statute.	Extent of Repeal.
16 & 17 Vict. c. 99	An Act to substitute, in certain cases, other punishment in lieu, of transportation	s. 12 *
16 & 17 Vict. c. 107	An Act to amend and consolidate the laws relating to the Customs of the United Kingdom, etc. ...	
17 & 18 Vict. c. 78	An Act to appoint persons to administer oaths, and to substitute stamps in lieu of fees, and for other purposes in the High Court of Admiralty of England	ss. 244-250 † inclusive
17 & 18 Vict. c. 104	The Merchant Shipping Act, 1854 ...	ss. 9 and 10 s. 101; sub.-s. iv. of s. 103, so far as the same creates a misdemeanour; ss. 140 and 164; s. 176 so far as the same creates a misdemeanour; ss. 179, 203, and 206; s. 207 so far as it creates a misdemeanour; ss. 220, 239, 267, 320, 366, 479, 496, and sub.-ss. i. and ii. of s. 518
19 Vict. c. 16	An Act to empower the Court of Queen's Bench to order certain offenders to be tried at the Central Criminal Court	The whole Act ‡
19 & 20 Vict. c. 54	An Act to facilitate the despatch of business before grand juries in England and Wales	
22 & 23 Vict. c. 17	An Act to prevent vexatious indictments for certain misdemeanours ...	The whole Act
22 & 23 Vict. c. 35	An Act to further amend the law of property and to relieve trustees ...	The whole Act
23 & 24 Vict. c. 38	An Act to further amend the law of property	s. 24 §
24 & 25 Vict. c. 94	An Act to consolidate and amend the statute law of England and Ireland relating to accessories to and abettors of indictable offences ...	s. 8
24 & 25 Vict. c. 96	An Act to consolidate and amend the statute law of England and Ire-	The whole Act

* This section enacts that every person convicted of larceny after a previous conviction for felony may be sentenced to penal servitude for any period not exceeding ten years.

† These sections relate to signalling smuggling vessels at sea; being assembled to the number of three or more for the purpose of smuggling; being assembled armed for that purpose, and kindred matters.

‡ A similar observation applies to s. 19 of this statute to that I have previously made in connection with 51 Geo. 3, c. 100.

§ This section relates to the fraudulent concealment of title or falsification of pedigree; its provisions are transferred to the draft Code.

|| This section merely corrects an omission in s. 24 of 22 & 23 Vict. c. 35.

Date of Statute.	Title of Statute.	Extent of Repeal.
24 & 25 Vict. c. 97	land relating to larceny and other similar offences An Act to consolidate and amend the statute law of England and Ireland relating to malicious injuries to property	The whole Act *
24 & 25 Vict. c. 98	An Act to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery	The whole Act
24 & 25 Vict. c. 99	An Act to consolidate and amend the statute law of the United Kingdom against offences relating to the coin	The whole Act
24 & 25 Vict. c. 100	An Act to consolidate and amend the statute law of England and Ireland relating to offences against the person	The whole Act
25 & 26 Vict. c. 53	An Act to facilitate the proof of title to and the conveyance of real estates	ss. 105-107 inclusive, and ss. 133 and 139 †
25 & 26 Vict. c. 61	An Act for the better management of highways in England	s. 19 ‡ and so much of the Act as relates to an indictment for the non-repair of a highway

* This is one of the series of valuable and important statutes for the consolidation of the criminal law passed in 1861. The statute contains 123 sections. Of these about 25 relate, either wholly or in part, to offences punishable upon summary conviction; but in many cases the acts so punishable assume the character of indictable offences when committed by an offender after previous summary conviction. In order that the country may possess a perfect and complete Code of Criminal Law and Procedure, it would be necessary that the legislature should pass a Code dealing with the law and procedure applicable to summary offences. If this were done contemporaneously with a measure similar to the present draft Code, which is restricted to indictable offences, the Consolidation Acts, and other statutes which contain, in part, substantive law and procedure in relation to summary offences, might be repealed in their entirety—obviously a most desirable thing. Otherwise, it would be necessary to consider the means by which those portions of statutes dealing with summary offences may be best legislated for. The same observations apply to 24 & 25 Vict. cc. 97 and 100, amongst other statutes.

† These sections relate to the punishment of frauds in relation to the registration of land.

‡ This relates to preferring an indictment for the non-repair of a highway where the obligation to repair is disputed.

Date of Statute.	Title of Statute.	Extent of Repeal.
25 & 26 Vict. c. 65	An Act for the more speedy trial of certain homicides committed by persons subject to the Mutiny Act	The whole Act
25 & 26 Vict. c. 67	An Act for obtaining a declaration of title	ss. 44-47 inclusive * s. 166 †
25 & 26 Vict. c. 89	The Companies Act, 1862	
26 & 27 Vict. c. 44	An Act for the further security of the persons of Her Majesty's subjects from personal violence	The whole Act
26 & 27 Vict. c. 73	An Act to give further facilities to the holders of India stock	ss. 13-15 ‡
28 Vict. c. 18	An Act for amending the law of evidence and practice on criminal trials	s. 2, so far as the same relates to Courts of criminal judicature §
28 & 29 Vict. c. 124	An Act for consolidating certain enactments relating to the Admiralty	ss. 6-9
29 & 30 Vict. c. 25	An Act to consolidate and amend the several laws regulating the preparation, issue, and payment of exchequer bills and bonds	ss. 15, 20, and 21 ¶
30 & 31 Vict. c. 35	An Act to remove some defects in the administration of the criminal law	The whole statute.
30 & 31 Vict. c. 103	An Act for the extension of the Factory Acts	s. 11, so far as the same creates a misdemeanour**

* These sections relate to frauds in relation to title to land.

† This section relates to the falsification of books in the winding up of a joint stock company. A similar provision is inserted in this draft Code.

‡ These sections relate to the forgery of India stock, certificates, etc., and the personation of owners of India stock. These offences are comprised in this draft Code under the clauses relating to forgery and fraudulent personation.

§ The other sections of this statute relate to the rules of evidence.

|| These sections relate to false documents and personation of seamen, etc.; the remaining sections of the Act have no connection with criminal law or procedure.

¶ These sections relate to forgery and other offences in connection with exchequer bills and exchequer bill paper, the provisions of which are embodied in this draft Code; the other sections of the Act authorize the preparation, issue, and payment of exchequer bills and bonds.

** This portion of the section has reference to forging the certificate of an inspector or sub-inspector of factories. The rest of the Act is sufficiently indicated by its title.

Date of Statute.	Title of Statute.	Extent of Repeal.
30 & 31 Vict. c. 131	The Companies Act, 1867	ss. 34-36 inclusive *
30 & 31 Vict. c. 146	The Workshop Regulation Act, 1867	So much of ss. 17 and 20 as create misdemeanours.
31 & 32 Vict. c. 110	An Act to enable Her Majesty's Postmaster-General to acquire, work, and maintain electric telegraphs	ss. 20 and 21
31 & 32 Vict. c. 116	An Act to amend the laws relating to larceny and embezzlement ...	The whole Act
31 & 32 Vict. c. 121	An Act to regulate the sale of poisons and alter and amend the Pharmacy Act, 1852	s. 14 †
32 & 33 Vict. c. 62	The Debtors Act, 1869	ss. 11-14 and 16-19 ‡
33 & 34 Vict. c. 23	An Act to abolish forfeitures for treason and felony, and to otherwise amend the law relating thereto	The whole Act
33 & 34 Vict. c. 58	An Act to further amend the law relating to indictable offences by forgery	The whole Act
33 & 34 Vict. c. 97	An Act for granting certain stamp duties in lieu of duties of the same kind now payable under various Acts, and consolidating and amending provisions relating thereto ...	s. 25 §
33 & 34 Vict. c. 98	An Act for consolidating and amending the law relating to the management of stamp duties	ss. 18 and 22
34 & 35 Vict. c. 31	The Trades Union Act, 1871 ...	s. 18 ¶
34 & 35 Vict. c. 103	An Act to amend the law relating to the customs and inland revenue	s. 8 **
35 & 36 Vict. c. 33	An Act to amend the law relating to	

* These sections relate to forgery and false personation in connection with shares of joint stock companies—acts embraced under the general law upon those subjects in this draft Code.

† This section makes it a misdemeanour to obtain registration under the Pharmacy Act by any false declaration.

‡ These sections relate to offences by fraudulent debtors which are embodied in this draft Code. The other portions of the statute relate to the abolition of imprisonment for debt, and matters unconnected with criminal law.

§ This section enacts a penalty for frauds in relation to adhesive stamps.

|| These sections deal with criminal offences relating to stamps, and are embodied in this draft Code.

¶ This section relates to giving to any member of a trade union, etc., a false copy of rules.

** This relates to forgery of the name or handwriting of any Commissioner of Customs, etc.

Date of Statute.	Title of Statute.	Extent of Repeal.
	procedure at parliamentary and municipal elections	s. 3, and s. 24 so far as the latter creates a felony and prescribes the punishment for the offence of personation, or aiding, abetting, counselling, or procuring the commission of such offence *
35 & 36 Vict. c. 44	An Act to abolish the office of accountant-general of the High Court of Chancery in England, and to amend the law respecting the investment of money paid into Court, and the security and management of the moneys and effects of the suitors thereof	s. 12
35 & 36 Vict. c. 76	An Act to consolidate and amend the Acts relating to the regulation of coal mines and certain other mines	s. 37 †
35 & 36 Vict. c. 93	An Act for consolidating, with amendments, the Acts relating to pawnbrokers in Great Britain	So much of s. 29 as creates a misdemeanour ‡
36 & 37 Vict. c. 33	An Act to facilitate the proof of bye-laws and proceedings of municipal corporations in England and Wales	s. 4 §
36 & 37 Vict. c. 71	An Act to amend the law relating to salmon fisheries in England and Wales	s. 13
37 & 38 Vict. c. 36	The False Personation Act, 1874 ...	The whole Act
37 & 38 Vict. c. 88	An Act to amend the law relating to the registration of births and deaths	

* Section 3 relates to fraudulent acts in respect of nomination papers, ballot papers, and ballot boxes. These acts are punishable with imprisonment, with or without hard labour, for a period not exceeding six months in the case of any person other than election officers. Section 24 declares personation of a voter to be felony, and enacts two years, with or without hard labour, as the maximum punishment. There is an inconsistency in these punishments, and the punishment in both classes of offences should be assimilated. It is difficult to understand why to forge a ballot paper should be a misdemeanour punishable at most with six months' imprisonment, whilst a person applying for a ballot paper in the name of another person, or in his own name having already voted, should be guilty of felony punishable with two years' imprisonment.

† This section relates to forgery of a declaration as to a certificate under this Act.

‡ This part of the section relates to making a false declaration in relation to a pawn ticket.

§ This section relates to the forgery of seal or signatures of documents under this Act.

|| This section extends s. 32 of the "Malicious Injuries to Property Act" to salmon rivers.

Date of Statute.	Title of Statute.	Extent of Repeal.
	in England, and to consolidate the law respecting the registration of births and deaths at sea	s. 40, so far as relates to a conviction or indictment *
38 & 39 Vict. c. 24	The Falsification of Accounts Act, 1875	The whole Act
38 & 39 Vict. c. 25	The Public Stores Act, 1875 ...	s. 5 †
38 & 39 Vict. c. 86	The Conspiracy and Protection of Property Act, 1875	The whole Act ‡
38 & 39 Vict. c. 87	The Land Transfer Act, 1875 ...	ss. 99-103 §
38 & 39 Vict. c. 94	An Act to amend the law relating to offences against the person ...	The whole Act
39 & 40 Vict. c. 57	The Winter Assizes Act, 1876 ...	The whole Act
39 & 40 Vict. c. 80	The Merchant Shipping Act, 1876 ...	s. 4
40 & 41 Vict. c. 46	The Winter Assizes Act, 1877 ...	The whole Act

749. In any statute now in force, and which is not repealed hereby, the following expressions shall, from and after the coming into operation of this Code, be taken respectively to have the meaning hereby assigned, anything in any of the said statutes contained to the contrary notwithstanding; save and except when such meaning is inconsistent with any express provision herein contained, or it is otherwise expressly enacted in this Code.

The expressions "crime" or "felony" shall mean any offence against this Code upon conviction for which the offender is liable, under the provisions

Rule for the construction of expressions "crime," "felony," "misde-meanour," "indictable offence," and "indictment," whenever contained in any statute in force and not hereby repealed.

* This section enacts penalties for false statements, etc., in relation to a birth or death, and the offences contemplated by the section are punishable either on summary conviction or by indictment.

† This relates to obliteration of marks denoting the possession of Her Majesty in stores.

‡ Section 8 of this statute contains a provision as to the reduction of penalties by justices upon summary conviction for certain offences, which ought not to be repealed unless re-enacted elsewhere.

§ These sections relate to frauds in relation to the transfer of land under this Act.

PART VI. hereof, to be sentenced to death or to penal servitude for any term not less than seven years.

The expression "misdemeanour" shall mean any offence against this Code upon conviction for which the offender is liable, under the provisions hereof, to be sentenced to penal servitude for any term less than seven years, or to be imprisoned for any period, with or without hard labour.

The expression "indictable offence" shall mean any offence against this Code.

The expression "indictment" shall mean an Act of Accusation under the provisions hereof.

APPENDIX.

APPENDIX.

(A.)

THE PENAL CODE. *Form of Warrant where Accused is directed to be taken before a Magistrate or Justice within whose jurisdiction Offence committed.*

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division].

The _____ day of _____, 18 ____.

To P. C., constable of _____, and to all other
constables and officers of the peace of the _____ police
[or of the county of _____ (or place)].

You are hereby AUTHORIZED and COMMANDED, in Her Majesty's name, forthwith to take and convey A. B., who hath been charged before me with [*describe the offence*], alleged to have been committed by the said A. B. in the _____ of C., to the said _____ of C., and there carry him before some magistrate [or justice of the peace] for that _____, to answer further to the said charge, and to be dealt with according to law. And you are hereby further commanded to deliver to the said magistrate [or justice] this precept, together with the hereinafter-mentioned documents, viz. :—

entrusted to you for that purpose.

Signature and description of magistrate [or justice].

(B.)

THE PENAL
CODE.*Form of Warrant to apprehend in the first instance.*

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division].

The _____ day of _____, 18 ____.

To P. C., constable of _____, and to all and
several the constables and officers of the peace in England
and Wales.

You are hereby AUTHORIZED and COMMANDED, in Her Majesty's
name, forthwith to APPREHEND _____, now [or lately]
of _____, in the county of _____], [and (if
more than one) _____, now (or lately) of _____,
in the county of _____], [or if name of accused be
unknown, a person whose name is unknown, and whose descrip-
tion is as follows:—

and who will be identified to you by _____, of _____],
against whom an information in writing and on oath [or solemn
affirmation] has been laid before me, the undersigned, this
day of _____; AND TO BRING HIM [or them] before me, or
some other magistrate [or justice] having jurisdiction in the
matter, to answer a charge preferred against him [or them] by
_____, of _____, in the county of _____, of
[set out the offence], contrary to _____ clause of the Penal Code.

Signature and description of magistrate [or justice].

THE PENAL
CODE.

(BB.)

Form of Summons to Accused.

TAKE NOTICE, that if you
fail to attend
PERSONALLY
at the time
and place
herein men-
tioned, you
will be liable
to be arrested
upon a war-
rant.

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division of _____].

The _____ day of _____, 18 ____.

To [insert name and address of accused, or, if more than one be
jointly accused, of each of the accused].

You [if more than one, and each of you] are hereby COMMANDED,
in Her Majesty's name, to appear personally at the

Court holden at _____, in the county of _____,
 on the _____ day of _____ instant [*or next*],
 at _____ of the clock in the _____ noon, to answer a charge
 preferred against you by _____, of _____, in
 the county of _____, of [*set out the offence*] contrary to
 clause of Penal Code.

Signature and description of magistrate [or justice].

(C.)

THE PENAL
CODE.

Form of Information.

In the Magistrate's Court of _____ [*or, In the*
 Petty Sessional Division of _____].

The _____ day of _____, 18 ____.

The information of _____, of _____, in the
 county of _____, taken this day on oath [*or solemn*
affirmation] before me, the undersigned, one of the magistrates
 sitting at the above-named Court [*or one of Her Majesty's*
justices of the peace for the _____ of _____], who, being
 first sworn [*or making solemn affirmation*] before me, saith
 [*set out the facts having relation to the offence charged in the first*
person; and, when a warrant is applied for, state the grounds].

Signature of deponent.

Sworn [*or solemnly affirmed*]
 before me, the day and year
 first above written.

Signature of magistrate
 [*or justice*].

(D.)

THE PENAL
CODE.

*Form of Summons for service on Prosecutor or Witness deposing to
an Information.*

SUMMONS TO
ATTEND AS A
WITNESS.

In the Magistrate's Court of [or, In the
Petty Sessional Division of].

TAKE NOTICE,
that if you
wilfully fail
to obey this
summons, you
will be liable
to be arrested
upon a
warrant and
committed to
prison.

The day of 18 .

To [insert name and address of person to be served].

You are hereby COMMANDED, in Her Majesty's name, to appear personally at the Court holden at , in the county of , at a day and hour notice of which will be given to you, there to prosecute and give evidence [or give evidence only] upon the hearing of a charge of [set out the offence], preferred against *; and so on from time to time, as often as may be required of you in that behalf.

Signature and description of magistrate [or justice].

* If the prosecutor or the witness is required to produce any book, or document, or other thing, add here: And at the same time and place to produce [set out in detail what is required to be produced].

(E.)

THE PENAL
CODE.

*Form of Warrant to apprehend an Accused who has wilfully failed to
appear to a Summons.*

In the Magistrate's Court of [or, In the
Petty Sessional Division of].

The day of , 18 .

To P. C., constable of , and to all and several the constables and officers of the peace in England and Wales.

You are hereby AUTHORIZED and COMMANDED, in Her Majesty's name, forthwith to APPREHEND , now [or lately]

of _____, in the county of _____ [and (if
more than one) _____, now (or lately) of _____,
 in the county of _____], against whom it has been
 duly proved to my satisfaction a summons was issued and duly
 served, commanding him [or them] to appear personally at the
 Court, holden at _____, in the county of _____
 _____, on the _____ day of _____, to answer a
 charge preferred against him [or them] by _____, of _____,
 _____, in the county of _____, of [set out
the offence as charged in the summons], contrary to _____ clause of
 the Penal Code, and who has [or have] wilfully failed to obey
 the said summons; AND TO BRING HIM [or them] before me, or
 some other magistrate [or justice] having jurisdiction in the
 matter, to answer the said charge, and to be dealt with accord-
 ing to law.

Signature and description of magistrate [or justice].

THE PENAL
CODE.

SECOND
SUMMONS.

(F.)

Form of Second Summons.

TAKE NOTICE,
 that you
 having failed
 to attend in
 obedience to a
 first summons
 issued against
 you, but it not
 being made to
 appear that
 such dis-
 obedience was
 wilful, this
 second
 summons is
 issued. Should
 you fail to
 attend
 PERSONALLY
 at the time
 and place
 mentioned, you
 will be liable
 to be arrested
 upon a
 warrant.

In the Magistrate's Court of _____ [or, In the
 Petty Sessional Division of _____].

The _____ day of _____, 18 ____.

To [insert name and address of accused, or, if more than one be
 jointly accused, of each of the accused].

You [if more than one, and each of you] are hereby COMMANDED,
 in Her Majesty's name, to appear personally at the
 Court, held at _____, in the county of _____,
 on the _____ day of _____ instant [or next], at _____ o'clock
 in the _____ noon, to answer a charge preferred against
 you by _____, of _____, in the county of _____
 _____, of [set out offence as described in the first
 summons], contrary to _____ clause of the Penal Code.

Signature and description of magistrate [or justice].

(G.)

THE PENAL CODE. *Form of Warrant issued after the granting of a Summons, but prior to the time for appearing thereto.*

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division of _____].

The _____ day of _____ 18 ____ .

To P. C., constable of _____ , and to all and
several the constables and officers of the peace in England
and Wales.

You are hereby AUTHORIZED and COMMANDED, in Her Majesty's
name, forthwith to APPREHEND _____ , now [or lately]
of _____ , in the county of _____ [and (if
more than one) _____ , now (or lately) of _____ ,
in the county of _____], against whom a summons has
been issued and duly served, commanding him [or them] to appear
personally at the _____ Court, holden at _____ ,
in the county of _____ , on the _____ day of
_____ instant [or next], to answer a charge of [*set out the
offence as stated in the summons*], preferred against him [or them]
by _____ , of _____ , in the county of _____ ,
contrary to _____ clause of the Penal Code, it having been
duly proved to my satisfaction, by an information in writing
and on oath, that the said _____ will not be likely
to appear to the said summons [or that it is necessary, in
the interests of justice, that this warrant should issue to appre-
hend the said _____], [and, if *more than one*, the said
_____]; and you are hereby FURTHER COMMANDED to
bring the said _____ [and _____] before
me, or some other magistrate [or justice] having jurisdiction in
the matter, to answer the said charge so preferred against him
[or them].

Signature and description of magistrate [or justice].

(H.)

*Form of Endorsement upon a Warrant.*THE PENAL
CODE.

The day of , 18 .

I, the undersigned, hereby authorize P. C. [*insert christian and surname and describe his office*], who bringeth to me the within-written warrant, and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, to execute the same, and forthwith to convey the within-mentioned A. B. before C. D., Esquire, the magistrate [*or justice or officer*] granting the within warrant, to be dealt with according to law, it having been duly proved on oath [*or solemn affirmation*] before me, to my satisfaction, that the said A. B. now is, or is reasonably believed to be, within my jurisdiction, and that the signature appended to the within warrant is in the proper handwriting of the said C. D., Esquire, and that the said C. D., Esquire, is a magistrate [*or justice or officer*] for , having jurisdiction and authority by law to issue the said warrant.

Signature and description of magistrate [or justice or officer].

(I.)

*Form of Search-Warrant.*THE PENAL
CODE.

In the Magistrate's Court of [*or, In the*
Petty Sessional Division of].

The day of , 18 .

To P. C., constable of , and all other constables and officers of the peace for the said county [*or place*].

You are hereby AUTHORIZED AND COMMANDED to enter into the premises situate and being , and there to search for [*set out specifically the property or other thing to search for which this warrant is granted*], and to convey the same before , to be dealt with according to law.

Signature and description of magistrate [or justice].

(J.)

THE PENAL
CODE.*Form of Information prior to issuing a Search-Warrant.*

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division of _____].

The _____ day of _____, 18 ____.

The information of _____, of _____, in
the county of _____, taken this day on oath [or solemn
affirmation] before me, the undersigned, one of the magistrates
[or justices] sitting at the above-named Court [or acting for the
above-named division], who, being first sworn [or making solemn
affirmation] before me, saith [*set out what property is intended to
be searched for, the nature of the offence to which the same relates,
and the grounds upon which a search-warrant is alleged to be
indispensable*].

Signature of deponent.

Sworn [or solemnly affirmed]
before me, the _____ day and year
above written.

*Signature and description of
magistrate [or justice].*

(K.)

THE PENAL
CODE.*Form of Endorsement authorizing the Execution of a Search-Warrant
on any Day and at any Hour.*

I hereby authorize the execution of the within warrant on
any day (Sunday included) and at any hour, either by day or
night, that may be reasonably necessary for that purpose.

Dated _____ day of _____, 18 ____.

Signature and description of magistrate [or justice].

(L.)

THE PENAL
CODE.*Forms of Affidavit (or Solemn Declaration) of personal Service of
Summons.*

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division of _____].

The _____ day of _____, 18 ____.

I, P. C., of _____, in the county of _____,
a constable for the said [county or place], make
oath and say [or solemnly and sincerely declare] that I did
serve _____, of _____, in the said county,
the person named in the summons, a true copy of which is
hereunto annexed and marked with the letter A., personally
with the said summons, on the _____ day of _____,
at _____.

Signature of deponent.

Sworn [or solemnly affirmed]
before me, the day and year
above written.

*Signature and description of
magistrate [or justice].*

(LL.)

THE PENAL
CODE.

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division of _____].

The _____ day of _____, 18 ____.

I, P. C., of _____, in the county of _____,
a constable of the said [county or place], make oath and say
[or solemnly and sincerely declare]:—

(i.) That I did duly serve upon _____, of _____,
in the said county, the summons, a
true copy of which is hereto annexed and marked with the

(M.)

THE PENAL
CODE.*Forms of Certificate under Clause 164.*

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division of _____].

I, the undersigned, hereby certify that upon the facts disclosed in the information, in writing and on oath, taken before me this _____ day of _____, it would be prejudicial to the interests of public justice to allow

[or _____], or any person on his [or their] behalf, to inspect or be furnished with a copy of the information[s] laid before me on the _____ day of _____, and upon which I have granted a warrant [or summons] against the said person[s], until I, or some other magistrate [or justice] having jurisdiction in the premises, shall otherwise in writing direct.

Signature and description of magistrate [or justice].

(MM.)

THE PENAL
CODE.

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division of _____].

The _____ day of _____, 18 ____.

I, the undersigned, hereby certify that upon the facts disclosed before me upon the hearing of a charge of _____ against _____ [and _____],

it will no longer, in my judgment, be prejudicial to the interests of public justice to allow the said

[and _____], or his [or their] counsel or solicitor [respectively], to inspect and be furnished with a copy of the information[s] upon which a warrant [or summons] was granted against them. WHEREFORE I DO NOW ORDER AND DIRECT that the said _____ [and _____], or his [or their] counsel or solicitor, duly retained and authorized in that behalf, shall be at liberty to inspect and be furnished with a copy of the said information[s].

Signature and description of magistrate [or justice].

(N.)

THE PENAL CODE. *Form of Summons to compel Attendance of Witness or Production of Documents, etc., upon preliminary Inquiry.*

SUMMONS TO ATTEND AS A WITNESS. In the Magistrate's Court of [or, In the Petty Sessional Division of].

TAKE NOTICE, The day of , 18 .

that if you fail to obey this summons, To [insert name and address of witness].

you will be liable to be arrested upon [Then follow on as in form D.] a warrant and committed to prison.

(O.)

THE PENAL CODE. *Form of Warrant in case of wilful Disobedience of a Summons by a Witness.*

WARRANT UPON DIS-OBEDIENCE OF In the Magistrate's Court of [or, In the SUMMONS TO ATTEND AS A Petty Sessional Division of].

WITNESS. The day of , 18 .

To P. C., constable of , and to all and several the constables and officers of the peace of .

Whereas it has been duly proved to my satisfaction, that a summons addressed to , of , in the county of , was duly served upon the said personally [or (set out mode of service) and that there is reasonable ground for believing that the said summons has come to the knowledge of the said], commanding the said to appear personally before , or some other magistrate [or justice] having the like jurisdiction, to give evidence [or to produce] upon the hearing of a charge of preferred against ; * [and that a reasonable sum was paid to the said upon the service of (or was left with) the said summons, to cover the cost and expenses of the attendance of the said in obedience to the said summons ;] and that the said has wilfully

* Omit these words where conduct money not required to be paid.

failed to appear in obedience to the said summons: YOU ARE THEREFORE HEREBY AUTHORIZED AND COMMANDED, in Her Majesty's name, forthwith to apprehend the said _____, and to bring him before me, or some other magistrate [or justice] having jurisdiction in the matter, to be dealt with in manner prescribed by the Penal Code.

Signature and description of magistrate [or justice].

N. B.—Whenever this warrant can be executed so that the said _____ can be taken then and there before a magistrate (or justice) having jurisdiction in the matter, the same is to be executed accordingly, and not otherwise (Penal Code, cl. 172).

(P.)

THE PENAL CODE. *Form of Certificate of Acceptance of Bail, to be endorsed on Warrant of Commitment.*

I, the undersigned, hereby certify that I have consented to accept bail for the within-named _____, in his personal recognizances in the sum of _____, and sureties for the sum of _____ each, conditioned for the appearance of the said _____ before me, or some other magistrate [or justice] having the like jurisdiction, to answer the within-mentioned charge, on the _____ day of _____, at the hour of _____ in the _____ noon [or to appear at the _____ Court holden at _____, in the county of _____, on the _____ day of _____, to plead to an Act of Accusation and to take his trial on the within-mentioned charge].

Signature and description of magistrate [or justice].

(PP.)

THE PENAL CODE. *Form of Certificate of Acceptance of Bail, when not endorsed on Warrant of Commitment.*

In the Magistrate's Court of _____ [or, In the Petty Sessional Division of _____].
The _____ day of _____, 18 ____.

I, the undersigned, hereby certify that I have consented to accept bail for _____, who was remanded [or com-

mitted for trial] by me [or _____, Esquire], one of the magistrates sitting at the above-named Court [or one of the justices for the above-named division], on the _____ day of _____, upon a charge of [*set out offence as described in the commitment*], in _____ sureties, in the sum of _____ each, [or (and) in the personal recognizance of the said _____ in the sum of _____] conditioned for the appearance of the said _____ at _____, on the _____ day of _____, upon such remanded examination [or for the appearance of the said _____ at _____, to plead to the Act of Accusation and take his trial for the said offence].

Signature and description of magistrate [or justice].

P
—
PP.

THE PENAL CODE. *Form of Certificate where Magistrate or Justice accepts Bail after having remanded or committed an Accused for Trial.*

In the Magistrate's Court of _____ [or, In the Petty Sessional Division].

To the keeper of the _____ gaol [or house of detention].

The _____ day of _____, 18 ____.

I, the undersigned, hereby certify that I have consented to accept bail for _____, now in your custody under remand [or awaiting trial at _____] upon accusation of [*state the offence as set forth in the warrant of commitment*], conditioned for his appearance to appear at _____, on the _____ day of _____, at the hour of _____ in the _____ noon, to answer further to the said Accusation [or to plead to and take his trial upon an Act of Accusation for the said offence], in the following amount[s]; that is to say, the personal recognizance of the said accused in the sum of _____ pounds [and sufficient surety (or sureties) in the sum of _____ pounds].

Signature and description of magistrate [or justice].

(Q.)

THE PENAL
CODE.*Form of Warrant where Accused remanded in Custody.*

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division of _____].

The _____ day of _____, 18 ____.

To _____, and all and several the constables
and officers of the peace for _____; and
_____, the keeper of the _____ gaol [or house
of detention of _____].

Whereas A. B. was this day charged before me for that [*set out offence, following the description of the offence as defined by the Penal Code*], and it appears to me to be necessary to remand the said A. B.: THESE ARE THEREFORE TO COMMAND you, the said constables and officers of the peace respectively, in Her Majesty's name, forthwith to convey the said A. B. to the _____ gaol [or house of detention] at _____, in the county of _____, and there to deliver him to the keeper thereof, together with this precept. AND I HEREBY COMMAND YOU, THE SAID KEEPER, to receive the said A. B. into your custody in the said _____ gaol [or house of detention], and there in safety keep him until the _____ day of _____ instant; AND I HEREBY FURTHER COMMAND YOU to have him, the said A. B., at _____, at _____ o'clock in the _____ noon of the same day, before me, or before some other magistrate [or justice] for the said _____ as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise lawfully directed in the mean time.

Signature and description of magistrate [or justice].

(R.)

THE PENAL CODE. *Form of Warrant to apprehend an Accused failing to appear upon remanded Examination, having been admitted to Bail.*

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division of _____].

The _____ day of _____, 18 ____.

To all and several the constables and officers of the
peace of _____.

YOU ARE HEREBY AUTHORIZED AND COMMANDED, in Her Majesty's name, forthwith to apprehend _____, now [or lately] of _____, in the county of _____, who is accused before me for that [set out offence], and, having been admitted to bail pending remand, has wilfully failed to appear in accordance with the conditions of his said recognizances; AND TO BRING HIM before me, or some other magistrate [or justice] having jurisdiction in the matter, to answer the said charge, and to be further dealt with according to law.

Signature and description of magistrate [or justice].

(S.)

THE PENAL CODE. *Form of Warrant of Commitment of Accused, pending Trial.*

In the Magistrate's Court of _____ [or, In the
Petty Sessional Division of _____].

The _____ day of _____, 18 ____.

To P. C., constable of _____; and to the keeper
of the _____ gaol [or house of detention] at _____.

Whereas _____ has this day been committed to
take his trial at _____, accused for that he did [state the
offence or offences in the words of the Penal Code]: THESE ARE
THEREFORE TO COMMAND you, the said constable, to take the said

, and convey him safely to the gaol
 [or house of correction] at aforesaid, and there to
 deliver him to the keeper thereof, together with this precept.
 AND I DO HEREBY COMMAND you, the said keeper of the said gaol
 [or house of detention], to receive the said into
 your custody in the said gaol [or house of
 detention], and there in safety keep him until he, the said
 , shall be thence delivered by due course of law.

Signature and description of magistrate [or justice].

(SS.)

THE PENAL CODE. *Form of Warrant of Commitment for Trial in County not within jurisdiction of Committing Magistrate or Justice.*

In the Magistrate's Court of [or, In the
 Petty Sessional Division].

The day of , 18 .

To P. C., constable of , and to the keeper
 of the gaol [or house of detention]; and also
 to the keeper of the gaol, in the county
 of [or house of detention].

Whereas has this day been committed to
 take his trial at , accused for that [state the offence
 or offences in the words of the Penal Code]: THESE ARE THEREFORE
 TO COMMAND YOU, the said constable, in Her Majesty's name, to take
 the said , and him safely to convey to the
 gaol [or house of detention], and there to
 deliver him to the keeper thereof, together with this precept.

AND I DO HEREBY COMMAND YOU, the said keeper of the said gaol
 [or house of detention], to receive the said into
 your custody in the said gaol [or house of de-
 tention], and him there safely keep, until you shall cause him to
 be safely conveyed thence to the gaol, in the
 county of [or house of detention].

AND I DO HEREBY FURTHER COMMAND YOU, the said keeper, on or

before the day of instant [*or next*], to convey, or cause to be conveyed, the said , in safety, to the said gaol [*or house of detention*], and there to deliver him to the keeper thereof, together with this precept.

AND I DO HEREBY COMMAND YOU, the keeper of the gaol [*or house of detention*], in Her Majesty's name, to receive the said into your custody in the said gaol [*or house of detention*], until he shall be thence delivered by due course of law.

Signature of committing magistrate [or justice].

(T.)

THE PENAL CODE. *Form of Summons upon Witness to attend upon the Trial of an Accused.*

SUMMONS TO
ATTEND AS A
WITNESS ON
TRIAL.

To , of [*insert name, address, and description of witness*].

TAKE NOTICE, *that if you fail to obey this summons, you will forfeit the sum of pounds, to be recovered against you summarily in manner provided by the Penal Code. AND you may likewise be deemed guilty of a contempt of Court, and liable to be punished accordingly.* TAKE NOTICE, that you are hereby COMMANDED, in Her Majesty's name, to appear personally at , in the county of , on day, the day of instant [*or next*], to give evidence on behalf of the prosecution [*or accused*] upon the trial of an Act of Accusation against of , who has this day been committed to take his trial upon accusation of , or at any other time and place at which the said may be ordered to be tried, if the place of trial should be changed and notice in writing to that effect shall be given to you. And so on from day to day, until the said Act of Accusation has been duly tried, or the Court shall dispense with your further attendance.*

Signature and description of magistrate [or justice].

* *If the witness is required to produce any book, document, or other thing relating to the offence charged, or the defence thereto, add here: AND YOU ARE HEREBY FURTHER COMMANDED, at the same time and place, to PRODUCE to the Court and jury [set out in detail what is required to be produced].*

(U.)

THE PENAL CODE. *Form of Certificate of Expenses of Witness attending before Magistrate or Justice, to be endorsed on Summons.*

The day of , 18 .

I hereby certify that the within-named
attended before me [*or, and before* , Esquire], at
the within-mentioned Court, as a witness in relation to the within-
mentioned charge, times; and that the amount to
which the said is, in my opinion, entitled to be
paid for his loss of time and expenses in so attending as a
witness as aforesaid, is as follows:—

					£	s.	d.
days' attendance, at				per day			
Allowance for travelling expenses			
Total	£			

Signature and description of magistrate [or justice].

(TT.)

THE PENAL CODE. *Form of Summons to compel Attendance on Trial of any Person not examined at the preliminary Inquiry.*

To [*insert name, address, and description of person to be served*].

TAKE NOTICE, that you are hereby COMMANDED, in Her Majesty's
name, to appear personally at , in the county
of , on day, the day of instant
[or next], at the hour of in the noon, to give evi-
dence on behalf of the prosecution [*or accused*] upon the trial of
an Act of Accusation against , of ,
who has been committed to take his trial upon accusation of
 , or at any other time and place at which the said
 may be ordered to be tried, if the place of
trial should be changed and notice of writing to that effect
shall be given to you. And so on from day to day, until the

*of a contempt
of Court, and
liable to be
punished
accordingly.*

said Act of Accusation has been duly tried, or the Court shall dispense with your further attendance.*

Given under my hand the day of , 18 .

Signature and description of magistrate [or justice].

N.B.—Where conduct money is to be paid upon service hereof, add : You are to receive herewith the sum of as conduct money, to cover your costs and expenses of attending in obedience hereto.

* If the witness is required to produce any book, document, or other thing relating to the offence charged, or the defence thereto, add here : AND YOU ARE HEREBY FURTHER COMMANDED, at the same time and place, to PRODUCE to the Court and jury [set out in detail what is required to be produced].

(V.)

THE PENAL
CODE.

Form of Certificate authorized to be given to an Accused who is unable, by reason of Poverty, to retain Solicitor or Counsel upon his Trial.

To , treasurer of the county of [or as
the case may be].

I, the undersigned, hereby certify that , who has this day been committed by me, the undersigned, to take his trial at , upon a charge[s] of [and], is unable, by reason of poverty, to employ solicitor or counsel in his defence upon his trial; and that in consequence thereof, and in pursuance of clause 238 of the Penal Code, I have granted to the said this certificate, whereby you are authorized to pay to such [solicitor and] counsel as the said shall, by endorsement in writing upon this certificate, nominate and authorize, upon production of this certificate duly endorsed as aforesaid, after the trial of the said , the [respective] sum[s] hereunder set forth, as fee for conducting the defence of the said at .

The solicitor appointed by the said	£	„	„
The counsel „ „	£	„	„
Total 	£		

And for the payment by you of the said sum, this certificate shall be a full and sufficient authority.

Given under my hand this day of , 18 .

Signature and description of magistrate [or justice].

THE PENAL
CODE.

Form of Endorsement upon above Certificate.

I, the within-named , do hereby nominate and appoint , solicitor, of , and , barrister-at-law, to undertake and conduct my defence at , upon a charge [or charges] of ; and authorize the said and to receive the fees [respectively] payable by virtue of this certificate.

Dated day of , 18 .

Witness (Signed)

THE PENAL
CODE.

Form of Receipt upon Payment of Amount mentioned in Certificate.

Received, the day of , 18 , of the treasurer of the county of [or as the case may be], the sum of , being the amount payable to me under the above certificate and the authority endorsed thereon.

£ *Signature, address, and description.*

(W.)

THE PENAL
CODE.

Declaration by Prosecutor of his Intention to prefer an Act of Accusation.

The day of , 18 .

In the Magistrate's Court of [or, In the Petty Sessional Division of .]

I, the undersigned, , of , in the county of , hereby declare my intention

to prefer and prosecute, at _____, an Act [or Acts] of
 Accusation against _____, of _____, for
 [set out the offence or offences preferred before and dismissed by the
 magistrate or justice, and in respect of which the Act or Acts of
 Accusation is or are about to be preferred], the said charge[s]
 having been dismissed on the _____ day of
 instant [or last] by _____, Esquire, one of the
 magistrates [or justices] acting _____.

Signature of intending prosecutor.

(WW.)

THE PENAL
CODE.

*Form of Recognizances to be entered into by Prosecutor who has
 declared his Intention of preferring an Act of Accusation.*

KNOW ALL MEN, BY THESE PRESENTS, that we, _____, of
 _____, _____, of _____, and
 _____, of _____, all in the county of
 _____, are hereby jointly and severally bound to
 our lady the Queen in the following sums:—that is to say,
 the said _____ in the sum of _____, and the said
 _____ and the said _____ in the sum of
 _____ each, of good and lawful money of Great Britain, to be
 made and levied on our several goods, chattels, lands, and
 tenements respectively, to the use of our said lady the Queen,
 her heirs and successors, if the said _____ fail in the
 condition hereunder written.

Taken and acknowledged, the
 day and year first above men-
 tioned, before me.

*Signature and description of
 magistrate [or justice].*

Signatures of parties becoming bound.

The condition of the above-written recognizances is such, that
 whereas the said _____ has declared in writing his

intention to prefer an Act [or Acts] of Accusation for [set out offence or offences, following words of declaration], against
 , of , at . If, therefore, the said duly prefers and prosecutes the said Act [or Acts] of Accusation, and obeys all and every such order [or orders] as to costs or otherwise as shall be made by any Court by or before whom the said Act [or Acts] of Accusation may be tried, then the said recognizances to be void, or else to remain in full force and virtue.

Signature of magistrate [or justice].

Signature of parties becoming bound.

(X.)

THE PENAL CODE. *Form of Notice to Accused that he is required to attend and plead to an Act of Accusation to be preferred against him.*

In the Magistrate's Court of [or, In the Petty Sessional Division of].

The day of , 18 .

TAKE NOTICE, that has this day declared in writing to me his intention TO PREFER AN ACT OF ACCUSATION against you at the [state the Court and place where same held], holden on day, the day of instant [or next], for [state the offence as set out in the declaration and recognizances of the prosecutor], and has duly entered into recognizances before me, himself in the sum of pounds and surety [or sureties] in the sum of pounds, conditioned to prefer and prosecute the said Act of Accusation, and to obey such order as to costs or otherwise as shall be made by the Court by or before whom the same may be tried.

If you fail to appear at the time and place appointed, you AND TAKE NOTICE further that YOU ARE HEREBY REQUIRED AND COMMANDED to APPEAR PERSONALLY at the said Court holden at aforesaid, on the said day of

*will be liable
to be arrested
on a warrant.*

instant [*or next*], at the hour of _____ in the _____ noon,
to PLEAD to the said Act of Accusation, and to take your trial
thereon when and as the said Court shall appoint.

Signature of magistrate [or justice].

(Y.)

THE PENAL CODE. *Forms of Summary Conviction by Magistrate or Justices in Petty Sessions.*

v. } In the Magistrate's Court of _____ [*or, In the*
} Petty Sessions of _____, holden at _____,
in the county of _____].

BE IT REMEMBERED that, on the _____ day of _____
[*set out christian and surname, and address and occupation of ac-*
cused, if known], being charged before me, the undersigned [*or*
us, the undersigned, being two of Her Majesty's justices of
the peace for the said county (*or place*) in petty sessions
assembled], for that [*state the offence in the words of the Penal*
Code, with the time and place when and where committed, as reduced
into writing and read to the accused upon his pleading guilty], and
formally pleading guilty before me [*or us*] and desiring to be
dealt with summarily, is thereupon convicted before me [*or us*].
And I [*or we*] adjudge the said _____, for the said
offence,* to be imprisoned in the _____ gaol [*or house*
of correction] at _____, in the said [county], there
to be kept, with [*or without*] hard labour, for the space of
_____ months [*or weeks or days*].

Given under my hand [*or our hands*] the day and year first
above written.

Signature and description of magistrate [or justices].

* [*Or to enter into his own recognizances in the sum of _____ pounds*
(and to find one [*or two*] surety [*or sureties*]) to appear before me (*or us*) to
receive sentence for the said offence, if and when called upon for that pur-
pose); (*and, or to keep the peace and be of good behaviour meanwhile; or*
to pay forthwith a fine of _____ (*or by instalments of _____*)).]

THE PENAL
CODE.

(YY.)

v. } In the Magistrate's Court of [or, In the Petty
Sessions of , holden at , in the
county of].

BE IT REMEMBERED that, on the day of
[*set out christian and surname, and address and occupation of ac-*
cused, if known], being charged before me, the undersigned [or
us, the undersigned, being two of Her Majesty's justices of
the peace for the said county (or place) in petty sessions as-
sembled], for that [*state the offence in the words of the Penal*
Code, with the time and place when and where committed, as reduced
into writing and read to the accused upon his pleading guilty], and
the age of the said not exceeding in my [or
our] opinion sixteen years, and no objection being made by or
on behalf of the accused to my [or our] dealing with the said
 summarily, and the said formally
pleading guilty before me [or us] and desiring to be dealt with
summarily, is thereupon convicted before me [or us]. And I [or
we] do adjudge and direct that the said , for the
said offence, be imprisoned in the gaol [or house
of correction] for the term of days;* and at the
expiration of such term I [or we] do further order and direct
the said be sent to and retained in the reformatory
school of , in the county of , for the
term of years.

* [Or to pay forthwith a fine of
); (or and receive
inflicted upon him by

(or by instalments of
 strokes with a birch rod, to be
).]

(Z.)

THE PENAL CODE. *Form of Certificate of Secretary of State for War, that it would contribute to the maintenance of good order and military discipline if accused (being a person subject to the Mutiny Act, charged with murder or manslaughter) were to be tried at the Central Criminal Court.*

I, the undersigned, Her Majesty's Principal Secretary of State for the War Department, hereby certify that [*insert name or, if more than one person, names of accused*], lately committed for trial for the murder [*or manslaughter*] of [*name of person killed*], deceased, and now detained in the gaol [*or as the case may be*] of _____, in the county of _____, is a person [*or are persons*] subject to the Mutiny Act, and that the said _____, deceased, was, at the time the alleged murder [*or manslaughter*] was committed, also a person subject to the said Act, and that the said alleged murder [*or manslaughter*] was committed in England or Wales out of the jurisdiction of the Central Criminal Court; and I do hereby further certify that, in my opinion, it is expedient that a more speedy trial of the said _____ [and _____] should be had than the usual course of practice allows, and that it would contribute to the maintenance of good order and military discipline if the said _____ [and _____] were to be tried for the said offence at the Central Criminal Court, under the provisions of clause 282 of the Penal Code.

Given under my hand this _____ day of _____, 18 .

Signature of the said Secretary of State.

(AA 1.)

THE PENAL
CODE.*Form of Act of Accusation.*

In the High Court of Criminal Justice,
Central Criminal Court [*or* Assizes], [*or*, In the
Sessions].

18 .

Statement of accusation against

Christian and surname.	Address (if known).	Description.

[Where more than one person is jointly charged, the names, address, and description of each should be separately stated.]

Charges that the said [and] did,
on the day of , in the year of our Lord
18 , at , in the county of
[here set out the charged offence, or, if more than one, the offences, in
manner shown by the forms AA 2—AA 17], contrary to clause
or sub-section () of clause of the Penal Code.

*Seal of the Court.**Forms of stating Offence or Offences in Act of Accusation.*

(AA 2.) Unlawfully and wilfully murder [*set out christian and surname of deceased*] by [*set out the unlawful act or omission from which death resulted*], having at the time of committing such act [*or omission*] the express intention, formed deliberately and without provocation, unlawfully to cause death.

(AA 3.) Unlawfully cause the death of [*set out christian and surname of deceased*] by knowingly and intentionally [*set out the unlawful act or omission from which death resulted*].

- (AA 4.) *Infanticide.* Unlawfully cause the death of a certain infant, to which she gave birth on day of [*or whilst in the act of birth*], by knowingly and intentionally [*set out the unlawful act from which death resulted*].
- (AA 5.) *Attempt to Murder.* Unlawfully attempt to wilfully murder [*set out christian and surname of person attempted to be murdered*] by [*set out the unlawful means by which the offence was attempted to be committed*].
- (AA 6.) *Sending Letter threatening to Murder.* Unlawfully write and send through the post to [*or unlawfully write and cause to be received by; or knowing the contents thereof, unlawfully cause to be delivered to*] a letter, a true copy of which is hereto annexed, threatening that he, the said [*or that certain persons whose names are unknown*], would murder the said , intending thereby to put the said . in fear [*or intending thereby to induce or compel the said to (state the unlawful object)*].
- (AA 7.) *Rape.* Unlawfully induce [*set out the christian and surname of the woman ravished*] to submit herself to carnal connection with him, the said [*accused*], and permit him to have carnal knowledge of her, the said , by falsely pretending and representing to the said that such carnal knowledge was necessary for the purpose of a certain medical [*or surgical*] treatment [*or by falsely personating and pretending to be the lawful husband of her, the said .*
- Or unlawfully and by force have carnal knowledge of without her consent.
- (AA 8.) *Causing grievous bodily harm with certain Intents.* Unlawfully cause grievous bodily harm to [*set out the christian and surname of person injured*], with intent to maim him, the said [*or to disable him, the said*]; or to facilitate the escape of , then being in lawful custody of a police constable upon a charge of committed by the said [*or of which the said was then accused*].

(AA 9.) Being legally bound and able to provide for
endangering
life by Omission to provide
necessaries. an infant child of him, the said , unable to
 withdraw himself from the said and to provide
 for himself, intentionally and without just excuse neglect
 to provide the same, whereby the life of the said
 has become endangered [*or the health of the said*
is seriously injured].

(AA 10.) Unlawfully break into and enter the dwelling-house [*or as the*
Burglary. *case may be*] of , situate at ,
 in the county of [*or by using threats of bodily*
 violence to and putting in fear , then being
 in charge of the dwelling-house of , situate, *etc.*,
 obtain entrance to and enter the said dwelling-house], between
 the hours of nine of the clock in the evening of
 and six o'clock in the morning of the succeeding day, with intent
 to steal certain property of the said , then
 being in the said dwelling-house [*or and did steal therein the*
 following property, that is to say:—

AA 11.) Unlawfully, by threatening that he, the said ,
Robbery. would accuse [*insert christian and surname of person threatened*]
 of having committed an unnatural offence, demand and take
 from the said a gold watch and chain
 [*or the sum of* pounds], the property of the
 said .

Or unlawfully, by threatening to accuse (*insert christian and*
surname of person threatened) of having unlawfully and indecently
 assaulted her, the said [*accused*] [*or one C. D.*],
 unless he, the said , would execute to the said
 a deed covenanting to pay to her, the said
 , her executors, administrators, or assigns,
 during his lifetime, an annuity of one hundred pounds, com-
 pelled the said to execute the said deed and
 to enter into the covenant afore-said.

(AA 12.) Unlawfully, and with intent to defraud, forge the signature to a
Forgery. certain cheque for the sum of pounds, purporting to be
 the signature of , in the county of .

Or unlawfully, and with intent to prejudice ,
 of , in the county of , forge the
 endorsement of the name of the said to a bill
 of exchange for the sum of pounds.

Or unlawfully, and with intent to defraud, make a certain
 document purporting to be a cheque for the sum of pounds,
 drawn upon the bank at by one C. D.,
 there being in fact no such person in existence as the said C. D.

Or unlawfully, and with intent to defraud, alter a certain cheque
 for the sum of one hundred pounds, drawn by ,
 of , by converting the words and figures one
 hundred (100) so as to make the said cheque appear to be drawn
 for and to authorize payment of the sum of one thousand pounds.

Or unlawfully, and with intent to defraud, obtain the execu-
 tion of , of , to a
 certain indenture by knowingly representing that the same was
 a demise of a certain messuage at a reserved yearly rental,
 whereas such indenture was in fact a conveyance of the said
 messuage to the said [*the accused*] in fee
 simple.

(AA 13.) Unlawfully commit perjury upon the trial of an action in the
Perjury. Queen's Bench Division of the High Court of Justice at
 Westminster, wherein one was plaintiff, and
 one defendant, by falsely asserting upon
 oath [*or solemn affirmation*] [*set out seriatim the statement or state-
 ments alleged to be false*], knowing the said statement [*or state-
 ments respectively*] to be false [*or being ignorant whether or not
 the said statement (or statements respectively) was (or were)
 true or false*].

(AA 14.) Unlawfully tender to a counterfeit florin, knowing
Uttering
Counterfeit
Coin. the same to be counterfeit.

Or unlawfully put off to a counterfeit half-sovereign, knowing the same to be counterfeit, and having, at the time of doing so, in his possession two other counterfeit coins.

AA 15.) Unlawfully steal the sum of one sovereign [*or a coat (or as the Theft. case may be)*] of the value of , the property of the said .

Or unlawfully apply to his own use the sum of five pounds [*or twenty yards of silk, of the value of* , the property of] in the possession of [*or received by*] the said [*the accused*], for and on account of the said [*the person deprived*], without his consent.

Or unlawfully apply to his own use the several sums of money set out in the third column of the schedule hereto annexed, received by him respectively for the use and benefit of , from the several persons whose names and addresses are set out in the second column of the said schedule, on the several days mentioned in the first column of the said schedule.

Or being entrusted with a horse, the property of , of the value of one hundred pounds, without the consent of the said [*the owner*] sold the said horse.

Or being a clerk in the employment of the governor and company of the Bank of England, unlawfully steal a dividend warrant for the sum of pounds, lodged with the said governor and company, and entrusted to the said [*the accused*] as such clerk.

Or unlawfully steal one hundred yards of linen, of the value of two pounds ten shillings, the property of , exposed in a field at , in the county of , during the process of manufacture.

Or unlawfully induce to deliver to him one piece of silk, of the value of pounds, by falsely representing that he then was the servant of C. D., a customer of the said [*person deprived of the goods*], and that

he was authorized by the said C. D. to receive the same on his behalf.

Or unlawfully induce _____ to deliver to him the property, the particulars and value of which are described in the schedule (A) hereto annexed, on the several days therein mentioned, by means of the several false representations set out in the schedule (B) hereto annexed.

(AA 16.) Unlawfully conspire together (and also with divers other persons whose names are unknown) to defraud the several persons whose names and addresses are set out in the first column of the schedule hereto annexed of the property respectively set out against the names of the said persons in the second column of the said schedule, by [*describe briefly the unlawful means by which the property was obtained or attempted to be obtained*].

Conspiracy to Defraud.

Or unlawfully conspire together to defraud the public by means of an advertisement inserted in the _____ newspaper, falsely representing that the said _____ and _____ were jewellers established in business at _____, in the county of _____, and then were able and willing to supply chains of 18-carat gold, of the weight of two ounces each, to whosoever would remit to them the sum of five pounds by cheque or post-office order.

(AA 17.) Unlawfully publish a defamatory libel of and concerning _____, of _____, in the words following [*set out the words relied upon as defamatory, and, where the libel is by irony, innuendo, or insinuation, add: thereby intending to impute to the said _____ that (set out what it is alleged is intended to be imputed to the prosecutor)*].

Libel.

Or unlawfully publish a defamatory libel of and concerning _____, of _____ (knowing the same to be false), in a certain book entitled _____, and which said libel is contained in various passages of the said book, a copy of which passages is set out in the schedule hereto annexed.

$$\frac{W}{W}.$$
THE PENAL
CODE.*Forms of Heading to Annex of Act of Accusation.*

1. The following are the particulars of the goods alleged in the annexed Act of Accusation to have been stolen by you [*set out name of accused as stated in the Act of Accusation*], and the dates when such offences are respectively alleged to have been committed, viz. :—

Date of offence.	Description and value of property.
January 1, 1878 	A gold watch of the value of five pounds.
March 2, 1878 	Fourteen yards of silk of the value of three pounds ten shillings.
April 4, 1878 	A pair of diamond earrings of the value of twenty pounds.

Seal of the Court.

2. The following are the several sums of money alleged to have been unlawfully applied by the accused to his own use in the annexed Act of Accusation, together with the names and addresses of the persons from whom and the dates when the same are alleged to have been received, respectively.

Date when received.	Name and address of person from whom received.	Amount of money received and misappropriated.
July 1, 1878 ...	John Jones, 115, Highbury Street, St. Luke's 	£ s. d.
August 12, 1878	William Brown, 54, John Street, Clerkenwell 	3 2 6
October 17, 1878	Martha Robinson, 93, Baker Street, Islington 	5 7 1
		0 14 0

Seal of the Court.

The following are the particulars and value of the property alleged to have been fraudulently obtained by you in the annexed Act of Accusation, and the dates when and persons from whom the same were obtained, and the false pretences alleged

to have been used by you, and whereby you obtained the said property, viz. :—

Date when obtained.	Description and value of property.	From whom obtained.	Nature of false representations when property obtained.
1878, April 15.	A pianoforte of the value of forty pounds.	John Robinson.	That he, the accused, had supplied Lady Smith, of , with musical instruments during the past ten years; that the said Lady Smith then was a customer of the accused; that she had given the accused an order for a pianoforte, and that the pianoforte obtained from the said John Robinson was intended for delivery to the said Lady Smith.
, May 8.	A hogshead of sherry of the value of twenty - four pounds.	Thomas Brown.	That he, the accused, was a gentleman of independent means, residing at Sydenham, in the county of Kent; that he had dealt for several years past with Messrs. Jones & Co., of , to whom he was well known, and to whom he had from time to time paid large sums of money; and that his bankers were the Union Bank of London, Branch.
, May 11.	A horse of the value of sixty pounds.	Robert Jerrold.	The like representations as made to Thomas Brown.
, May 12.	The sum of forty-four pounds in money and a suit of clothes of the value of six pounds.	John Nash.	That he, the accused, kept a banking account with the London and Westminster Bank, Branch, and that he then had funds in the hands of the said bankers sufficient to pay a cheque for the sum of fifty pounds, and that such cheque was a good and valid order for the payment of the said money on demand.

Seal of the Court.

- 1.
- 2.
- 3.

} [*Set out same.*]

(CC.)

In the [*add description of Court*].

v.

The day of , 18 .

(DD.)

Form of Demurrer to Challenge of Array.

v.

The prosecutor [*or* accused] says that the challenge of
to the array of the panel of jurors
returned to serve and try Acts of Accusation at the present session
of the Court is not sufficient in law to quash the array of the
panel aforesaid, and that there is no necessity for him, the said
, nor is he obliged by law, to answer to the
said challenge in the manner and form in which it is alleged;
whereupon he prays judgment, and that the array of the said
panel may be affirmed.

(BW.)

THE PENAL
CODE.*Form of Bench Warrant.*In the [*add description of the Court*].

The day of , 18 .

To all constables and others Her Majesty's officers of the peace in England and Wales.

These are to will and require you and every of you, and you are hereby COMMANDED, in Her Majesty's name, upon sight hereof, to bring before me at [*or us, Her Majesty's* justices of the peace for the county of , at the quarter sessions of the peace now holden at , in and for the said county] the body of , who stands accused before this Court at this same session upon an Act of Accusation, for that [*set out the offence as stated in the Act of Accusation*], and who has failed to appear before this Court to plead to and take his trial upon the said Act of Accusation, in pursuance of the recognizances entered into by him in that behalf [*or of a notice duly served upon him in accordance with clause 245 of the Penal Code*], if the Court be then and there sitting; or if not, then to convey the said forthwith upon apprehension under this warrant to gaol [*or house of detention*], and deliver him to the keeper thereof, together with this precept. AND I DO HEREBY COMMAND the said keeper to receive the said into his custody in the said gaol [*or house of detention*], and him there safely keep until the first day of the then next session of this Court at [*or of the peace holden at ,* in and for the said county], unless he shall be thence sooner delivered by due course of law.

Signature of Judge or two justices.

(MQ.)

THE PENAL
CODE.*Statement of Objection to Act of Accusation.*In the [*add description of Court*].

The day of , 18 .

v. { The accused says that the Act of Accusation, whereby he is accused of [*set out alleged offence as stated in the Act of Accusation as amended, if any amendment has taken place*], does not state any offence in law; whereupon he prays judgment, and that the said Act of Accusation may be quashed.

(CQ.)

THE PENAL
CODE.*Form of Certificate of Reversal of Conviction by Divisional Court or Court of Criminal Appeal.*

v. { In the High Court of Criminal Justice [*or, In the Court of Criminal Appeal*].

To the sheriff of [*or to the keeper of the*
gaol of].

The day of , 18

This is to certify that the Divisional Court of the High Court of Criminal Justice [*or the Court of Criminal Appeal*] has this day reversed the conviction against at the for [*state the offence*] on the day of last, and has directed an entry to be made upon the record accordingly. And you are therefore hereby required forthwith to discharge the said from your custody so far as relates to such conviction.

Given under the Seal of the Court.

L.S.

(CR.)

THE PENAL CODE. *Form of Case to be stated for the opinion of the High Court of Criminal Justice.*

v. } In the High Court of Criminal Justice.
The day of , 18 .

At the quarter sessions of the peace holden at ,
in and for the of ,
and were tried upon an Act of Accusation
(a copy of which is hereto annexed).

It was proved in evidence upon the trial [*set out briefly the facts proved*].

It was objected by counsel for the accused
[or and] that he [or they] could not be con-
victed in law, inasmuch as [*state the objection*].

I directed the jury [*set out the direction to the jury*].

The jury found [both] the accused guilty,
[and the accused not guilty] upon the Act of
Accusation [*or if the jury returned a special finding, set out same verbatim, and add upon this finding*: I directed a verdict of guilty
to be entered against the said and
(*or as the case may be*)].

I [the Court] postponed judgment upon the accused until the
question arising on this conviction shall have been decided.

The opinion of the High Court is prayed whether upon this
verdict [or finding] the conviction ought to be reversed in
favour of the said accused [*or in favour of both or either of the
said accused*].

Signature of recorder or chairman.

(AM.)

THE PENAL
CODE.*Form of Admission.*

In the [add description of Court in which trial appointed to take place].

The day of , 18 .

I do hereby, as counsel [or solicitor] for , who is appointed to be tried at the sessions of the above-named Court on an Act of Accusation * charging him for that [set out the offence as stated in the Act of Accusation], admit the following facts, that is to say :—

1. [State plainly and expressly the
2. facts intended to be admitted, with
3. any qualification it is desired to
4. make.†]

And I do hereby certify that I am duly and fully authorized by the said personally, as his counsel [or solicitor] in his defence in relation to the said Act of Accusation,

* If there is more than one Act of Accusation against the same accused, and it is desired to make an admission in relation to the charges contained in them, there should be a separate admission in each Act of Accusation.

† e.g. 1. That the accused received from , named in the said accusation, a cheque for the sum of five pounds mentioned in the said Act of Accusation on the date therein stated.

2. That such cheque was made payable to the order of John Jones, the prosecutor of the said Act of Accusation.

3. That the endorsement "John Jones" upon the said cheque is in the handwriting of the accused, and was so endorsed by him in order to obtain payment of the said cheque.

4. That the accused received the said sum of five pounds, being the proceeds of the said cheque, from the bank, upon which the said cheque was drawn.

The accused, however, alleges, but the prosecutor denies, that he, the said accused, had at the time the authority of the said John Jones to endorse his name to any cheques he might receive on his behalf, in order to obtain payment of the same, and that he endorsed the said cheque in pursuance of such authority, and duly accounted to the prosecutor for the money received as the proceeds thereof.

to make the said several admissions respectively upon his trial for the said alleged offence.*

Signature and description of counsel [or solicitor].

* The admissions here given by way of example presuppose that B. has been committed for trial upon a charge of having unlawfully forged the endorsement of A. to a cheque for five pounds received by B. on A.'s behalf from one of A.'s customers; that B. admits the receipt and endorsement of the cheque, and that he received the proceeds. His defence is that he had the authority of the prosecutor to do what he did, and that he duly and properly accounted to the prosecutor for the proceeds of the cheque. As the law now stands, A. would be compelled to call as evidence upon the trial—

1. The customer who drew and handed the cheque to B.
2. The cashier at the bank who paid the cheque.
3. Assuming it was paid by a bank-note, possibly several persons to trace the note, including the person who received it from B.
4. Possibly an expert in handwriting, or some person familiar with the handwriting of B., to prove that the endorsement of the cheque is in the natural (or feigned) handwriting of B.

Not only does this involve serious inconvenience to the witnesses, who are required to attend, and are quite without personal interest in the matter, but a considerable amount of time is taken up in giving formal evidence of facts which are not at all in dispute, and in some instances the minds of the jury are apt to be led astray from the only real issue or issues which they have to try.

If the law were altered so as to allow of admissions being made in criminal, as they may be in civil trials, the real issue the jury have to try would become at once apparent, and an enormous amount of time would be saved to every one concerned in the administration of criminal justice—judges, juries, counsel, solicitors, witnesses, etc. In the illustration given for instance, the prosecutor would probably be the only witness for the prosecution (except, possibly, the constable who apprehended the accused); and this would effect a saving of from three to six witnesses, which means to them a saving of at least two days upon the average, to attend before the grand jury and again upon the trial; and an important economy of public time and expense.

Of course, even this would be a quite insufficient reason for a change in the law if it involved any, the least, chance of hardship or injustice to an accused upon his trial; but I venture to express a confident opinion that, with the safeguards suggested by the clauses in this draft Code dealing with the matter (*vide* pp. 203–209), no abuse or hardship would be likely to occur.

(AO.)

THE PENAL CODE. *Form of Order directing Admissions to be made by Prosecutor or Accused.*

v.

}

In the High Court of Criminal Justice.

The day of , 18 .

Whereas has been committed for trial [or is appointed to be tried] at [set out Court] upon an Act of Accusation for [state the offence as set forth by the committing magistrate under clause 222, if the accused has been committed for trial ; or where the prosecutor has entered into recognizances to prefer an Act of Accusation, as set forth in the declaration and recognizances under clause 243]; and whereas [insert name of prosecutor] has called upon the said accused [or the said accused has called upon the prosecutor] to admit the following document[s] (hereto annexed and marked [or sealed] with the seal of the Court) [or statement(s) of fact], that is to say, upon the trial of the said Act of Accusation [set out the document or documents, or the statement or statements of fact, and if necessary annex the original to the order, and have same marked or sealed by the Court or Judge]; and whereas I am [or the Court is] of opinion that the said document[s] [or statement(s) of fact] is [or are] of a purely formal character, and that it is expedient in the interests of justice, and with a view to avoid unnecessary trouble and expense, that the said document[s] [or statement(s) of fact] should be admitted by the accused [or prosecutor] upon the said trial; [and where the order for admission is obtained at the instance of the prosecutor: And whereas I am (or the Court is) further of opinion that the said accused cannot be prejudiced thereby upon his trial]: I do [or the Court doth] ORDER that the said document[s] [or statement(s) of fact] be admitted by the said accused [or prosecutor] upon the trial of the said Act of Accusation, without other or further proof, upon the production of this order.

Seal of the Court.

(OP.)

THE PENAL CODE. *Form of Order to produce Accused upon the hearing of an Application to a Judge to direct him to make Admissions on Trial.*

v. } In the High Court of Criminal Justice.
 The day of , 18 .
 To the keeper of the gaol [or house
 of detention].

You are hereby COMMANDED, in Her Majesty's name, to produce and have before the body of , detained in Her Majesty's said prison of under your custody, awaiting trial, under safe and secure conduct at , on day, the day of instant [or next], by o'clock of the noon, upon the hearing of an application on behalf of the prosecutor for an order that the said do make certain admissions, set forth and specified in a notice in writing served upon the said , upon the trial of an Act of Accusation against him at . And that immediately after the said application has been disposed of, that you return him, the said , to the said prison under safe and secure conduct. For all which this shall be your authority.

Seal of the Court.

(AD.)

THE PENAL CODE. *Form of Affidavit of Discovery by Prosecutor.*

THE QUEEN, on the prosecution of } In the High Court of Criminal Justice [or, In the
 v. } quarter (or general) sessions of the peace holden in and for
 the of].
 I, , of , the prosecutor upon
 this Act of Accusation, make oath and say as follows [or do
 solemnly and sincerely affirm and declare as follows]:—

1. I have in my possession or power the books and documents

relating to the offence of which the said _____ is accused by the said Act of Accusation set forth in the schedule hereto [*or in the first and second schedule hereto*].

2. I do not object to produce any or either of the said books and documents respectively [*or I object to produce the books and documents set forth in the second schedule hereto, upon the ground that (state the ground or grounds upon which the prosecutor founds his objection to produce and verify the facts)*].

3. I have had, but have not now, in my possession or power the [books and] documents relating to the offence of which the said _____ is accused, set forth in the third schedule hereto.

4 [*or* 3]. The said last-mentioned [books and] documents were last in my possession or power [*state when*].

5 [*or* 4]. The said [books and] documents [*state what has become of the last-mentioned books or documents, and in whose possession they now are, or otherwise account for them*].

6 [*or* 5]. According to the best of my knowledge, information, and belief, I have not now, and never had, in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other person or persons on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum paper, or writing, or any copy of or extract from any such book or document, or any other book or document whatsoever, which can in any way whatever have reference, directly or indirectly, to the said offence with which the said _____ is accused, or his defence or answer thereto, or wherein any entry has been made relative to such matter or any of them, other than and except the documents set forth in the said schedules hereto respectively.

Omit this paragraph where there are no such books or documents.

(NP.)

THE PENAL
CODE.

Form of Notice by Accused requiring Prosecutor to produce Documents, etc., for Inspection.

v. } In the [*set out Court in which trial is appointed to take place*],

The day of , 18 .

TAKE NOTICE, that I, the said _____ [or as solicitor
for and on behalf of the said _____], require you to
produce to me for inspection the following [books and] docu-
ment[s] referred to in the Act of Accusation herein [or in
the affidavit made by you, the above-named prosecutor, on the
_____ day of _____ instant (or last)], viz. [*describe
the books or documents*].

*Signature and address of the accused,
or name and address of the solicitor
where the notice is given on behalf of
the accused, with the addition of Solicitor
for the said accused.*

To [insert name of prosecutor, and where the prosecutor is known to be represented in the prosecution by a solicitor, and to _____, his solicitor].

(NNP.)

THE PENAL
CODE.

Form of Notice by Prosecutor appointing a Time and Place for Inspection.

v. } In the [*set out Court in which trial is appointed to take place*].

The day of , 18 .

TAKE NOTICE, that you can inspect the [books and] document[s]
mentioned in your notice of the day of instant
[or last], at , on day, the day of

instant [*or next*], between the hours of
and o'clock [*except the following, viz. (set out any book
or document which the prosecutor objects to produce), which I (or the
said prosecutor) object(s) to give you inspection upon the ground
that (state distinctly the ground or grounds)]*].

[*Or, TAKE NOTICE, that I (or the said prosecutor) object(s) to give
you inspection of the (books and) document(s) mentioned in your
notice of the day of instant (or last), upon
the ground that (state same distinctly)]*].

*Signature of prosecutor, or name and
address of solicitor where notice given by
one, with the addition of Solicitor for the
prosecution.*

To [*the person by whom the demand
for inspection is given*].

(VC.)

THE PENAL
CODE.

*Form of Certificate for Costs of Accused upon Court directing a
New Trial.*

In the Court of Criminal Appeal [*or as the case may be*].

The day of , 18 .

To the treasurer of the of .

The Court, having this day directed a new trial to be had of
the Act of Accusation against for [*state the
offence as set out in the Act of Accusation*], doth ORDER that the costs
of the accused in relation to such new trial be ascertained by the
proper officer of the Court before which such new trial takes
place, so soon as the same has been had, and that he certify the
amount thereof payable under this order. And the Court doth
further ORDER that you, the above-named treasurer, do pay to
the said , or to such person as he may autho-

rize in writing to receive the same, the sum so ascertained and certified to be payable.

Seal of the Court.

I do hereby certify that the amount payable under this order is the sum of pounds shillings.

£

Dated day of , 18 .

Signature of the officer of the Court.

INDEX.

INDEX.

ABDUCTION :

- not triable at quarter sessions, 53.
- of female against her will, 294.
- of unmarried girl under the age of sixteen years, 294.
 - between the age of sixteen and twenty-one years,
with intent to cause her to be married or
carnally known, 295.
- provision as to property possessed by any woman who is abducted,
295, 296.
- of a voter at an election, 438, 439.

ABORTION :

- procuring, not triable at quarter sessions, 53.
 - definition and punishment of, 287, 288.
- knowingly supplying or procuring anything intended to procure, 288.
- inciting or conspiring to procure, 288.

ABROAD :

- jurisdiction of magistrate or justice as to offences committed, 71, 72.

ABUSE :

- of discretionary power by any public officer, judicial or otherwise,
413.

ACCESSORY, 54, 250-254.

- definition and punishment of an, after the fact, 253, 254.
 - limitation of punishment of, 254.
 - when husband or wife not an, 254.
- after the fact to murder, 286.
 - treason, 261.

ACCOMPLICE :

- accused not to be convicted upon uncorroborated testimony of, 230.
- present law as to evidence of, 230.

ACCORD :

- persons acting in common, 252, 253.

ACCOUNTS :

- officers of public companies fraudulently making, circulating, or publishing false, 388, 389.
- falsification of, by clerks or servants, 390.
- fraudulent omission in, 390.

ACCUSED :

- entitled to copy of warrant upon which he is apprehended, 85, 86.
- and to inspect and be furnished with copy information, unless otherwise ordered, 85, 86.
- to be permitted at all reasonable times to confer with counsel or a solicitor, or his authorized clerk, and to deliver personally any written instructions, 86, 87.
- apprehended on a warrant and further accused of another offence committed out of the jurisdiction of the Court before whom he is brought, how to be dealt with, 87.
- entitled to be present during preliminary inquiry, 94.
- and to be represented by counsel or solicitor, 95, 142.
- accused or his counsel or solicitor entitled to cross-examine witnesses for the prosecution, 95, 96.
- evidence taken in the preliminary inquiry to be read over in the presence of, 96, 99.
- competent and compellable to be examined in preliminary inquiry, 98, 99.
- by whom examination to be conducted, 99.
- no oath to be administered to, 99.
- what questions may be put to, 99.
- magistrate or justice to protect, from unauthorized questions, 99, 100.
- at what period to be examined, 100, 115.
- examination of, to be reduced into writing, or taken by shorthand writer, 100.
- what to be informed of at close of examination in chief, 101.
- may be examined by his counsel or solicitor in preliminary inquiry, 101.
- examination of, in preliminary inquiry, when two or more jointly accused, 101.
- examination of, to be read over to and signed by him and by magistrate or justice, 102.
- examination of, part of the evidence in the case, 102.
- when and for what period an, may be remanded, 103-105.
- may be ordered to be brought up before expiration of remand, 105.
- when entitled to bail as of right, 106.
- in other cases, may be admitted to bail in discretion of magistrate or justice, 106, 107.
- not at once prepared with bail, may be admitted to bail subsequently, 108.

ACCUSED—*continued.*

- to be discharged on giving bail, 109, 110.
- omission to sign or transmit certificate of bail not to prejudice right of, 110.
- not bailed, how dealt with, 113.
- procedure where evidence insufficient to justify committal of, for trial, 114.
- discharge of, by magistrate or justice, for want of evidence, not a bar to a subsequent inquiry, 115.
- procedure where evidence raises a presumption of guilt of, 115.
- entitled to show cause why he should not be committed for trial; and to call witnesses, and be examined, 115.
- procedure where magistrate or justice decides to commit, 116, 117.
- offence for which committed to be stated in writing and form part of depositions, 117.
- procedure where magistrate or justice decides not to commit after hearing defence of, 117.
- where to be detained upon committal for trial, 118.
- provision where committed for trial in county or place not within jurisdiction of committing magistrate or justice, 118.
- condition of recognizance entered into by or for, 119.
- to be furnished with copy of depositions without charge, and summonses to compel attendance of witnesses on trial, 121, 129.
- no objection to be allowed by reason of, committed for trial or tried at a wrong place, unless it is shown that he was materially prejudiced, 121.
- granting certificate to, unable, by reason of poverty, to retain solicitor or counsel on his trial, 124.
- form and effect of same, 124, 125, 528, 529.
- service of notice of prosecutor having entered into recognizances to prefer an Act of Accusation against, 127, 128.
- entitled to copy of the examination of any person dangerously ill, whose statement has been taken, 135.
- pleading guilty and desiring to be summarily dealt with, entitled to be represented by counsel or solicitor, and to call witnesses in mitigation of punishment, 142.
- appeal from magistrate or justice refusing to admit to bail, 145–147.
- may apply to change place of trial, 149.
- consent of, where more than one person jointly charged, 151, 152.
- not to be called upon to plead or be tried, unless he has been either committed for trial, or prosecutor has duly entered into recognizances to prefer Act of Accusation, 153, 154.
- may apply to strike out of Act of Accusation anything which is not authorized to be included, 156, 157.
- may be tried separately upon any one or more of the offences included in Act of Accusation, 157, 158.
- but shall be afterwards liable to be tried upon any or either of the other offences included therein, 158.

ACCUSED—*continued*.

what sentence may be pronounced where convicted of separate offences, 158.

persons to appear or be brought before the Court to plead, 165.

calling upon, to plead, duty of officer of the Court, 165, 166.

called upon to plead and appearing to be of unsound mind, 171.

if so found by jury, may be ordered to be detained during

Her Majesty's pleasure, 171.

such accused entitled to assistance of counsel, 171, 172.

procedure where accused stands mute, 172, 173.

jurors to be called in the presence and hearing of, 173.

to be informed of his right to object to any proposed juror, 173.

procedure where a new panel directed to be returned, 176.

giving in charge to the jury, 178.

entitled to be present throughout trial, 179.

Court may permit an, to be absent during any portion of the trial, 179.

competent and compellable to be examined on his trial, 180-183.

when may be examined on trial by the prosecution, 180-182.

duty of the Judge in reference to examination of, 181-183.

examination of, on trial where accused defended by counsel, 181-183.

no oath to be administered to, when examined on his trial, 183.

saving as to an, who has pleaded guilty, or against whom prosecution withdrawn, 183.

entitled to address jury when not represented by counsel, 189, 190.

to be discharged on verdict of not guilty, 192.

acquitted on the ground of insanity, may be ordered to be detained during Her Majesty's pleasure, 192.

grounds upon which an, may move in arrest of judgment, 193, 194.

admitting, to bail when sentence respited, 200.

when directed to appear to receive judgment if called upon, 200.

may admit document or statement of fact, 203.

when admissions binding on, 203, 204.

prosecutor may call upon, to make admissions, 204, 205.

Court may require, to make admissions in certain cases, 205.

bringing up, upon application that he be ordered to make admissions, 205, 206.

may obtain order for production of books and documents, 206.

Court may order production of books and documents by, 206.

may obtain an order for discovery by prosecutor, 207.

and require production of books and documents discovered, 207.

form of notice, 207, 552.

application by, for a new trial, 210-217. See *New Trial*.

order for payment of costs to, incurred in new trial, 216.

presumed innocent until contrary proved by due course of law, 229.

ACCUSED—*continued*.

- ignorance of law not to excuse an, 229.
 - relevant to the question with what intent act done, 229.
- position of, who acts under ignorance or mistake as to fact, 229.
- not to be convicted upon uncorroborated testimony of an accomplice, 230.
- when deemed incapable of, or irresponsible for, crime, 246.
- order for payment of costs by an, generally, 459, 460.
- Court may order money found on, to be applied towards payment of costs, 460.
- prosecutor entitled to costs from, on his failing to support plea of justification of libel, 460.
- entitled to costs from prosecutor when acquitted upon a charge of publishing a defamatory libel, 460, 461.

ACKNOWLEDGING :

- any recognizance or bail, in the name of another person, without authority, 370.
- any *cognovit actionem* or judgment, or deed or other instrument, without authority, 370.

ACT OF ACCUSATION :

- no person to be called upon to plead to or be tried upon, unless he has either been committed for trial, or prosecutor has entered into recognizances to prefer same, 153, 154.
- by whom, and how, to be drawn, 154, 155.
- form of, 155, 535-540.
- to be according to forms in Appendix hereto, 155.
- not to accuse any person of any offence for which he has not been committed for trial, unless same is disclosed in depositions taken upon the hearing of any charge against such accused, or by leave of the Court, 156.
- if anything which is not authorized is included in, accused may apply to strike out same, 156, 157.
- what offences may be included in, 157.
- jury may find accused guilty or not guilty upon the whole, or guilty of one or more and not guilty upon other of the offences therein, 157.
- accused may be ordered to be tried separately upon any one or more of the offences included in, 157, 158.
- what acts in, amount to a separate offence, 158.
- what may be annexed to, 159.
- not to be void or insufficient by reason of defect of form or variance between it and evidence given on trial, 159.
- power to amend, 159.
- owner of property need not be stated in, 160.
- need not aver who was intended to be injured or prejudiced, 160.

ACT OF ACCUSATION—*continued.*

written instrument need not be set out in, 160.

to be engrossed or printed, 161.

prosecutor and accused to be entitled to inspect, and be furnished with copy or copies, 161.

accused persons to appear or be brought before the Court to plead to, 165.

accused entitled to copy of, when called upon to plead, if same not previously supplied, or if Court so directs, 165, 166.

when may be quashed, 177, 178.

form of objection to, 178, 545.

ACTION :

for anything done or reasonably claimed to have been done under the authority of this Code, 477.

what conditions necessary to maintain, and when notice of same necessary, 477, 478.

in what Courts such to be brought, 478.

limitation of time for bringing same, 479.

what defendant may plead in an, 479.

Court or Judge may stay proceedings in, where prohibited by this Code, 479, 480.

notice of special defence when commenced in County Court, 480, 481.

tender of amends, 481.

may be pleaded as a defence, but amount thereof must be paid into Court, 482.

if money paid into Court in respect of part only of cause of, defendant must so state, 483.

money paid into Court in, not to be paid out without Judge's order or consent of parties, 483.

procedure where plaintiff elects to accept payment into Court under a defence of tender in satisfaction, 483.

provision as to costs in that case, 484.

money paid into Court may be applied towards any costs ordered to be paid to defendant by plaintiff, 482.

procedure where plaintiff elects to accept a sum paid into Court as amends, 484.

removal of, when commenced in County Court, 483.

ACTS :

tending to public danger, 417–419.

the spread of disorders, 417.

ACTS OF PARLIAMENT REPEALED. See *Statutes repealed.*

36 & 37 Vict. c. 66, ss. 47 and 71, 18.

11 & 12 Vict. c. 42, 80, 81.

ACTUAL BODILY HARM :

intentionally causing, 300.

ADDRESSES :

of counsel, how regulated at trials, 187-189.

ADJOINING COUNTY :

justices for adjoining counties may act for either county while in the other, 49, 50.

trial may be directed to take place in, 163.

definition of, 163, 164.

ADJOURNMENT :

of trial where Act of Accusation ordered to be amended, 159, 160.

upon the application of the accused, 162, 163.

Court may direct jury to be kept together pending, 186.

or may allow them to return to their own homes, 186.

ADMINISTERING :

chloroform, etc., with certain criminal intents, 299.

poison so as to endanger life or inflict grievous bodily harm, 300.

with intent to injure or annoy, 300.

ADMIRALTY :

criminal jurisdiction of, transferred to High Court of Criminal Justice, 16.

ADMIRALTY DIVISION :

jurisdiction of, in proceedings for the condemnation and forfeiture of a ship, etc., in aid of hostilities against a friendly State, 433, 434.

proceedings in, may be instituted contemporaneously with criminal proceedings, 433.

institution of, not compulsory because criminal proceedings taken, and *vice versa*, 434.

ADMISSION :

what may be made in a criminal trial, 203.

mode of making same, 203, 204.

form of same, 204, 547, 548.

effect of, and when same may be given in evidence, 204.

when parties may be required to make, 204, 205.

what Court or Judge may direct, 205.

form of order, 205, 549.

AFFIDAVIT :

form of oath upon, 62.

foreigner proposing to make, 65.

of service, forms of, 84, 517, 518.

magistrate or justice authorized to take, 84.

of facts in mitigation of punishment, 194.

AFFIRMATION :

the term oath includes, 5.

in lieu of oath, 63.

to be of same force and effect as an oath, 64.

magistrate or justice authorized to take, 84.

AGENT :

- concealment of title by, 394.
- falsification of pedigree, upon which title does or may depend, by, 394.
- conviction of, not to prejudice civil rights of person aggrieved, 394, 395.

AGREEMENT :

- for restoration of property not invalid, unless in certain cases, 255.

AID :

- commission of offence, causing grievous bodily harm with intent to, 299.
- administering chloroform, etc., with the like intent, 299.
- attempting to cause grievous bodily harm with the like intent, 299.

AIDERS AND ABETTORS, 250, 251.

AIDING :

- smuggling, 426-428.

AMBASSADOR :

- violation of the privileges of an, 262.
- present law as to, 262.

AMENDMENT :

- of Act of Accusation, 159.
- trial may, with the consent of the accused, be adjourned when ordered, 159, 160.

AMMUNITION OF WAR :

- setting fire to, or destroying, in time of war, 260.
- setting fire to, 314.

ANNEX TO ACT OF ACCUSATION, 159.

- forms of heading to, 541-543.

ANNUITY :

- forgery of transfer of, 350.
- fraudulently personating owner of, 369.
- person authorized by power of attorney to transfer, etc., 369.

APOSTASY :

- observations on obsolete statutes which, *inter alia*, proscribe, 447, 448.

APPEAL :

- from Courts of inferior criminal jurisdiction to the High Court of Criminal Justice, 144-148.
- from the High Court of Criminal Justice to the Court of Criminal Appeal, 148, 198, 213.
- in mitigation of punishment, 194.

APPEAL, COURT OF CRIMINAL :

- establishment of, 11.
- constitution of, 11.
- ex-officio* Judges of, 11, 12.
- additional Judges of, 12.
- salary of Judges of, 12.
- precedence of Judges of, 14.
- pension of Judges of, 14.
- jurisdiction of, 18.
- to be composed of not less than five Judges, 19.
- may sit in two divisions, 19.
- regulation of sittings of, by Rules of Court, 29.
- regulation of pleading, practice, or procedure in, by Rules of Court, 30.
- jurisdiction to be exercised by, 33.
- may sit and act at any time or place, 34.
- sittings of, 34.
- may sit during Long Vacation, 35.
- in what cases an appeal may be brought from, 19.
 lies to, 148, 198, 213.
- reservation of questions of law arising on trial for consideration of,
 195-199.
- giving leave to move for a new trial, 213.
- appeal to, from refusal of Divisional Court to grant a new trial, 213.

APPOINTMENT :

- to a public office or employment, corrupt acts in relation to, 414-416.

APPREHEND :

- power to, without warrant, 66.
- how persons so apprehended to be dealt with, 67.

APPREHENSION :

- of person against whom warrant issued, 76, 67.
- causing grievous bodily harm with intent to resist or prevent the
 lawful, of himself or any other person, 299.
- administering chloroform, etc., with the like intent, 299.
- attempt to choke, render insensible, etc., with the like intent, 299.

APPRENTICE :

- wrongfully forcing on shore, or leaving behind a ship, 423.
- discharging abroad, 423.

ARMED :

- with dangerous weapon, being found at any time, with criminal
 intent, 337, 338.
- persons assembled, for the purpose or in aid of smuggling, 426, 427.

ARMY :

- officer of the, shooting at, when employed for the prevention of
 smuggling, 426.
- assaulting, resisting, or obstructing, by force or violence, 427.

ARRAY, CHALLENGE OF :

- form of same, 166, 543.
- grounds upon which same may be made, 166, 167.
- may be admitted or demurred to, 167.
- form of demurrer, 167, 543.
- if allowed, Court to direct new panel to be returned, 167, 168.
- if disputed, triers to be appointed, 168.
- procedure if triers find in favour of, or are unable to agree, 168.

ARREST :

- without warrant, 66-68.
- after an escape, 67.
- of suspected persons loitering at night, 67.

ARSENAL :

- setting fire to, or destroying, in time of war, 260.

ARSON :

- not triable at quarter sessions, 53.
- definition and punishment of, 313, 314.
- setting fire to building, etc., or goods therein, 314.
 - crop of cultivated vegetable produce, 314.
 - wood, plantation, heath, etc., 314.
 - stack of cultivated vegetable produce, 314.
 - mine or stack of mineral fuel, 314.
 - ship, etc., or any furniture, etc., thereof, or goods therein, 314.
 - military, naval, or victualling stores, etc., 314.
- attempts to commit, punishment of, 315.

ASSAULT :

- upon the sovereign, not triable at quarter sessions, 52.
- definition and punishment of, 262, 263.
- with intent to commit certain offences not triable at quarter sessions, 54.
- definition and punishment of a common, 306, 307.
 - an assault with intent to commit certain offences, 307, 308.
- proviso as to punishment of, with intent to commit offence, 308.
- with intent to endanger health, or the safety of any person or property, 308.
- with intent to obstruct the administration of criminal justice, 308.
- upon ministers of religion, 308.
- with intent to rob, 337.
- on officers or other persons duly employed for the prevention of smuggling, in the execution of their duty, 427.

ASSEMBLING :

- together, armed, for the purpose of or in aid of smuggling, 426, 427.
- two or more, in aid of smuggling, 427, 428.

ASSEMBLY, UNLAWFUL :

existing law as to, 265, 266.

ASSIGNMENT :

of valuable securities, forgery of, 351.
mercantile documents, forgery of, 352.
property, making a fraudulent, 401.

ASSIZES :

power to unite counties for the purpose of, 39, 40.
commissions of, 42.

ATTACHMENT, WRIT OF :

may be awarded against any person wilfully failing to obey order for
discovery, production, or inspection, 209.
powers of High Court of Criminal Justice as to granting, 209.

ATTEMPT :

to commit certain offences not triable at quarter sessions, 53.
 an offence, who are parties to an, 251.
 what constitutes an, 251.
 punishment of, 252.
 existing law as to, 252.
to kill the sovereign, his heir or consort, 258.
do the sovereign grievous bodily harm, 258.
subject him to physical restraint, 258.
commit assaults upon the sovereign, 263.
murder, 285, 286.
procure abortion, 288.
commit rape, 290.
cause grievous bodily harm, 298.
administer chloroform, etc., 299.
choke, suffocate, or strangle, 299.
render insensible, etc., 299.
commit arson, 315.
blow up buildings, etc., 315.
scuttle a ship, 317.
rescue a person from custody for offence punishable with death or
 penal servitude, 401, 402.
 the like for offence otherwise punishable 402, 403.

ATTEMPTING :

to send unseaworthy ship to sea, 422.

ATTESTATION :

forging the, to any power of attorney or authority to transfer stock,
etc., 361.

AUTHORIZED INQUIRY :

publication of matter in the course of an, privileged, 407.

AUTREFOIS ACQUIT, 169.

AUTREFOIS CONVICT, 169.

BACKING :

- warrant, when unnecessary, 77, 78.
- existing law as to, 77.
- English warrant in the Channel Islands, 79, 80.
- in England warrant granted in the Channel Islands, 81.
- a warrant, form and effect of, 80, 815.
- of Irish warrants in Scotland and Scotch warrants in Ireland, 80, 81.

BAIL :

- when accused may be admitted to, 69, 176, 180, 200.
- entitled to as of right, 106.
- in what cases, discretionary, 106, 107, 114.
- existing law as to admitting to, 106, 111, 112.
- surety not to be refused only because he is not a householder, 107.
- present practice, 107.
- excessive, illegal, 107.
- proposed surety not to be hindered or dissuaded, 107, 108.
- procedure where accused not at once prepared with, 103.
- where same may be entered into, 108, 109.
- accused to be discharged upon giving, 109, 110.
- omission to transmit certificate of, not to prejudice right of accused, 110.
- how given when sureties cannot attend before magistrate or justice who fixed same, or where accused detained, 110, 111.
- transmission of recognizances where not entered into before magistrate or justice who fixed, 112.
- accused admitted to, not surrendering, 114.
- condition of recognizances entered into by or for an accused, 119.
- transmission of recognizances upon committal of accused for trial, 123.
- appeal from magistrate or justice refusing to admit an accused to, 145, 146.
- present practice as to appeals from such refusal, 145.
- rule to show cause why accused should not be admitted to, may be made returnable in Court or Chambers, 147.
- estreating recognizances, 114, 169.
- admitting to, when sentence respited, 200.
- where person convicted directed to appear to receive judgment if called upon, 200.
- accused may be required to enter into recognizances, either in addition to, or in lieu of, any punishment, 234, 240, 241.
- fraudulently acknowledging, in the name of another, 370.

BALLOT PAPER :

- forging or fraudulently defacing or destroying, at an election, 435.

BALLOT PAPER—*continued*.

- forging the official mark on a, 435.
- without due authority supplying a, 435.
- fraudulently putting in ballot box at an election an unauthorized
435.
- fraudulently taking out of any polling station a, 435.
- without due authority destroying or interfering with, at an election,
435.
- attempting to commit either of such acts, 435.
- fraudulently applying for, in the name of another person, 440.
- the like in his own name, having previously voted at the same
election, 440.

BALLOT BOX :

- fraudulently putting into, any paper other than the authorized ballot
paper at an election, 435.
- without due authority destroying, taking, or opening, 435.

BANK OF ENGLAND :

- forgery of orders for payment of money on account of a public depart-
ment, or under the control of a Court of justice, 353, 354.
- persons in the employment of, making out false dividend warrants,
etc., 361.
- theft of certain property by officers or servants employed by the
governor and company of, 381.

BANK-NOTE :

- definition of, 348.
- paper, definition of, 349.
- making, etc., instruments for making, 357.
- forgery of, 351.
- offences preparatory to forgery of, 357-359.
- knowingly purchasing a forged, 358.

BANKRUPT :

- person adjudged, or whose affairs are liquidated by arrangement:—
 - not discovering property to trustee, and how, when, and for what
consideration he disposed of any part thereof, 396.
 - not delivering up property to trustee, 397.
 - not delivering up to trustee books, etc., 397.
 - knowingly making any material omission in statement relating to
his affairs, 397.
 - knowing that a false debt has been proved, wilfully failing for a
month to inform trustee, 397, 398.
 - quitting England and taking with him, or attempting or making
preparation for taking with him, any part of his property, 400,
401.

BANKRUPT—continued.

- after presentation of petition against him or commencement of his liquidation, or within four months thereof:—
 - concealing any part of his property to the value of ten pounds upwards, 398.
 - concealing any debt due to or from him, 398.
 - fraudulently removing any part of his property to the value of ten pounds, 398.
 - concealing, destroying, mutilating, or falsifying any book or document relating to his property or affairs, or being privy thereto, 398.
 - makes, or is privy to making, any false entry in any book or document relating to his property or affairs, 398.
 - fraudulently parts with, or makes any fraudulent omission in, any document affecting or relating to his property or affairs, 398.
- after presentation of petition against him or commencement of liquidation:—
 - wilfully withholding or preventing the production of any book, document, or writing affecting or relating to his affairs, 399.
- after presentation of petition against him or commencement of liquidation, or at any meeting of his creditors within four months next before such presentation or commencement:—
 - attempting to account for any part of his property by fictitious losses or expenses, 399.
- within four months next before presentation of petition against him or commencement of liquidation:—
 - having, by any wilfully false representation or fraud, obtained property on credit, 399.
 - being a trader, obtaining property on credit under false pretence of carrying on business and dealing in the ordinary way of his trade, 399.
 - pawning, pledging, or disposing of, otherwise than in the ordinary course of his trade, any property obtained on credit, 399.
- obtaining consent of his creditors to any resolution by false pretences or fraud, 400.
- making a false claim, etc., in any bankruptcy or liquidation, 400.

BANKRUPTCY LAWS:

offences against the, 396–401.

BAPTISMS:

- forging register of, 354.
- certified copy of, or entry in, register of, 354.

BARRATRY:

observations as to offence of, 442, 443.

BENCH WARRANT :

when to issue, 168.

form and execution of, 169, 544.

BENEFICE :

persons convicted of offence followed by a sentence of death, penal servitude, or imprisonment with hard labour, disabled from holding any ecclesiastical, 461, 462.

duration of disability, 462.

BIGAMY :

not triable at quarter sessions, 53.

definition and punishment of, 292.

proviso, 293.

BILL :

of sale, forgery of, 352.

of lading, forgery of, 352.

BIRTH, CONCEALMENT OF :

not triable at quarter sessions, 53.

definition and punishment of, 283, 289.

fœtus when not to be deemed a child, 239.

BIRTHS :

forging register of, 354.

certified copy of, or entry in, register of, 354.

BLACKENED :

being found at night with face, with a criminal intent, 337, 338.

BLANK SIGNATURE :

fraudulent abuse of, 347.

BODILY HARM :

compulsion by threat of, when a defence, 248.

definition and punishment of causing grievous, 297, 298.

attempting to cause, 298.

intentionally causing actual, 300.

person in charge of carriage causing, by wanton or furious driving, or other wilful misconduct or neglect, 301.

BODILY INJURY :

place of commission of offences resulting from, 230, 231.

unlawful acts likely to cause, 419.

BODY CORPORATE :

frauds by officers of a, 387-390.

BOOK :

protection of persons innocently selling a, containing defamatory matter, 409, 410.

BOOK OF COMMON PRAYER :

observations as to statutes directed against clergymen of the Established Church refusing to use, or speaking in derogation of the, 448.

BOOKS :

compelling production of, before magistrate or justice, 88-94.

the like on trial, 119, 120.

given in evidence in preliminary inquiry, provision for custody of, 116.

certified copy or extract from, 116.

transmission of, to place of trial, 123, 128.

officers of a body corporate or public company fraudulently destroying, mutilating, or falsifying, 388, 389.

director, etc., fraudulently destroying, mutilating, or falsifying, of a company in course of winding up, 389, 390.

clerks and servants fraudulently altering, mutilating, or falsifying, 390.

making any false entry in, or omitting any material particular from, 390.

BREACH :

of trust affecting the public committed by public officers, 413, 414.

of duty by public officers, 414.

BREACHES :

of duty tending to public danger, not triable at quarter sessions, 54.

of duty tending to public danger, 418, 419.

contract of service or hiring, 419.

duty by shipowners, masters, and seamen, 421-425.

by master or person in charge of a ship, after a collision, 425, 426.

BREAK :

definition of expression, 333.

BREAKING PRISON :

with intent to set at liberty himself or any other person detained for an offence punishable with death or penal servitude, 401, 402.

the like for an offence otherwise punishable, 402, 403.

BRIBERY :

at elections, not triable at quarter sessions, 54.

of judicial officers, 410, 411.

other public officers, 412, 413.

at an election, definition and punishment of, 436-438.

saving as to money paid or agreed to be paid for or on account of any legal expenses incurred in good faith, 438.

BRIDGES :

- obstructing or neglecting to repair, observations as to offence of, 445.
- malicious injuries to, 320.
- unlawful acts rendering, dangerous or impassable, 320.

BUILDING :

- setting fire to, or destroying, in time of war, 260.
- rioters demolishing, 268.
- injuring, 269.
- setting fire to, 314.
- the like to goods, etc., in, 314.
- blowing up, by gunpowder, etc., 315.
- placing gunpowder, etc., in, with intent to destroy, 316.
- breaking and entering, at night, with intent to commit an offence therein, 331, 332.
- breaking out of, at night, having committed an offence therein, 331, 332.
- breaking and entering, by day, and committing an offence therein, 332.
- breaking out of, by day, having committed an offence therein, 331, 332.
- breaking and entering, by day, with intent to commit an offence therein, 332.
- being found in, at night, with intent to commit an offence therein, 338.

BULLION :

- unlawfully conveying, out of the Mint, 373.

BUOYS :

- injuring, removing, or destroying, 319.

BURGLARY :

- not triable at quarter sessions, 53.
- definition and punishment of, 331, 332.
- definition of, at common law, 331.

BURIAL :

- offences in relation to, 310.
- forging register of, 354.
- certified copy of, or entry in, register of, 354

BUSINESS :

- distribution of, other than that to be performed by Judges, 23.

CANAL :

- malicious injury to bank or wall of, 320, 321.
- injuring or obstructing the business of, 321.

CARDS :

- cheating at, 392.

CARNAL KNOWLEDGE :

- definition of, 291, 292.
- of child under the age of twelve years, definition and punishment, 290.
 - between the ages of twelve and thirteen, definition and punishment, 291.
- attempt to carnally know child under thirteen, definition and punishment, 291.
- procuring a female under the age of twenty-one years to have carnal connection with any male, 291.

CARRIAGE :

- person in charge of, causing bodily harm by wanton or furious driving, or other wilful misconduct or neglect, 301.

CAVEAT :

- fraudulently procuring, etc., entry on, or erasure from, land registry of a, 393.
- order consequent on same null and void, 393.

CERTIFICATE :

- that to allow inspection or copy of information would be prejudicial to the interests of justice, 85, 86.
- forms of same, 85, 519.
- of consent of magistrate or justice to take bail, 103-112.
 - omission to transmit, not to prejudice right of accused to bail, 110.
- of expenses of witness attending upon magistrate or justice, 120, 121.
 - form of, 121, 527.
- may be granted upon committal to accused unable, by reason of poverty, to retain solicitor or counsel, 124.
 - form and effect of same, 124, 125, 528.
 - limitation as to amount of same, 125.
- of non-appearance of witness, 126.
- of Secretary of State upon application to change place of trial of person subject to Mutiny Act, charged with homicide, 152, 534.
- upon conviction being reversed upon question of law reserved, 196, 198.
- form of same, 197, 545.
- for interest or dividend, forgery of, 351.
- required or authorized by any statute relating to births, baptisms, marriages, deaths, or burials, 355.
- of character and position, forgery of, 356.
- of survey or registry of a British ship, 356.
- required by any Act relating to merchant shipping, 356.
- as to qualification of seamen, 356.
- for money paid in respect of a share or interest in stock, fraudulently, personating owner of, 369.
- public officers giving false, 411, 412.

CERTIFIED COPY :

forgery of, of entry in or extract from any register of births, baptisms
marriages, deaths, or burials, 355.

CHALLENGE :

of array. See *Array*.
of individual jurors. See *Jury*.
conveying, etc., a, to fight a duel, 306.

CHALLENGING :

or provoking a person to fight a duel, 306.

CHAMBERS :

sittings of Judges in, may be regulated by Rules of Court, 29.

CHAMPERTY :

observations as to offence of, 442.

CHANNEL ISLANDS :

power to issue English warrant in, 79, 80.

CHARGE :

notice of, fraudulently procuring, etc., entry on, or erasure from, land
registry of a, 393.
order consequent on same null and void, 393.
making a, on property with intent to defraud creditors, 401.

CHEMISTS, PHARMACEUTICAL :

forgery of register of, 356.

CHEATING :

by means of false scales, weights, or measures, 391.
common, 391.
fraudulently affecting market price of any funds, stock, share, or
merchandise, 391.
at play, 392.

CHILD :

decoying, etc., a, 339, 340.
proviso as to, 340.

CHILD STEALING :

definition and punishment of, 339, 340.
present punishment for, 339, 340.

CHLOROFORM :

administering, etc., with certain criminal intents, 299.

CHOKE :

attempting to, with certain criminal intents, 299.

CIVIL RIGHT :

- not affected by reason of act sued on being a criminal offence, 56.
- but Court may direct prosecution, 57.
- existing law in reference to, 56.

CLERK :

- Chamber, appointment, salary, and duties of, 24.
- allowance of travelling expenses to, 25.
- body, appointment and salary of, 24.
- salaries of, how charged and payable, 25.
- fraudulent alteration, mutilation, or falsification by, of any books, paper, writing, valuable security, or account of his employer, 390.
- fraudulently making a false entry in same, 390.
- omitting any material particular in same, 390.

CODE :

- definition of this, 4.
- application of this, 6.
- offenders to be tried under this, 7.
- acts done prior to this, coming into force, 8.
- construction of terms used in this, 3-6, 223-226.

CODICIL :

- stealing a, 380.

COERCION :

- marital, not henceforth to excuse crime, 247.
- present law as to, 247.
- unlawful, 419, 420.
- punishment at present authorized upon conviction for, 419, 420.

COGNOVIT ACTIONEM :

- fraudulently acknowledging, in the name of another, 370.

COIN :

- offences against public, 370-376.
- definition of current, 370, 371.
- false or counterfeit, 371.
- making counterfeit, 372.
- gilding or silvering counterfeit, 372.
- coin with intent that same shall pass for coin of higher denomination, 372.
- dealing in counterfeit, 372.
- importing, 372.
- making, etc., instruments for the manufacture, etc., of, 373.
- unlawfully conveying, out of the Mint, 373.
- fraudulently impairing current, 373.
- exporting counterfeit, 374.

COIN—*continued*.

unlawfully having in the custody or possession filings, chippings, or dust of gold or silver, obtained by impairing, etc., current, 374.

unlawful possession of three or more pieces of counterfeit current, with intent to utter, 374, 375.

less than three, 375.

uttering counterfeit current, 374, 375.

knowingly uttering counterfeit current, being at the time in possession of any other piece of counterfeit coin, 375.

and on the same day, or within the next ten days, knowingly utters another counterfeit, 375.

uttering a counterfeit, knowingly, 375.

coin or medal, etc., resembling current, as and for same, 375.

defacing current, 375, 376.

when offence relating to, is complete, 376.

offence relating to, need not be proved by an official from the Mint, 376.

COLLISION :

breach of duty by master or other person in charge of a ship, after a, 425, 426.

COLOUR OF OFFICE :

illegal or oppressive acts done under, 413, 414.

COMMISSION :

accepting without lawful authority a, in military or naval service of a foreign State at war with a friendly State, 428, 429.

COMMISSIONS :

of Oyer and Terminer, 35.

of Gaol Delivery, 30.

COMMITTAL FOR TRIAL :

procedure where evidence insufficient to justify, 114.

magistrate or justice decides upon, 116, 117.

to some county or place not within jurisdiction of committing magistrate, 118.

for offence triable at quarter sessions in case of exceptional difficulty, 119.

present practice as to binding over witnesses by recognizance on, 120.

to wrong place, no objection to be allowed by reason of, unless accused materially prejudiced, 121.

procedure subsequent to, 149-164.

COMMON JURY :

definition of, 465.

remuneration of, 465.

COMMON JURY—*continued*.

Judges to issue precepts to sheriff to summon for trial of persons at
 Courts of Oyer and Terminer and Gaol Delivery, 466, 467.
 summoning, for trials at quarter sessions, 467.
 fine on, for non-attendance, 467, 468.
 mode of enforcing same, 468, 469.
 time within which to be levied, 469.
 notice of fine to be given to, 469.
 remission of fine, 469.
 not to be liable to fine for non-attendance unless summons served six
 clear days beforehand, 469, 470.
 sheriff to make out panel of, 470.
 and to transmit same and printed copies to officer of Court, 470.
 copy panel of, to be publicly exhibited, 470.
 making out and publishing chief panels of, 470, 471.
 panel of, to be annexed to Act of Accusation, 471.
 mode of balloting for, 470, 471.
 to be chosen by ballot, 472.
 same may try several Acts of Accusation in succession, 472.
 limitation of service of, 472.
 Court may direct trial before, 472, 473.

COMMON LAW :

definition of offences at, abolished, 7.

COMMON NUISANCES :

observations as to the existing law relating to, 445.
 an offence at common law, 445.

COMMUNITY :

publishing a defamatory libel concerning a, 406.

COMPELLING :

by criminal means, the delivery or transfer of property, 334, 335.
 any person to make, execute, destroy, alter, or
 cancel a valuable security, 334, 335.
 to write, impress, or affix any name or seal upon
 any paper or parchment, in order that same
 may be converted into a valuable security,
 334, 335.

COMPENSATION :

to persons whose salaries, etc., seriously diminished by this Code, 26.
 power of Court to order persons convicted of offences involving injury
 to property to make, 453.
 the like for injury to the person, 453.
 such order may be either in addition to or substitution of other
 punishment, 453.

COMPENSATION—*continued*.

upon order for, being satisfied, certificate to be granted and to be a bar to any other claim for compensation for the same matter, 453, 454.

observations upon the present law as to awarding, in a criminal trial, 454.

COMPOUNDING :

an action brought under a penal statute, without leave, observations as to offence of, 443.

COMPULSION :

when a defence, 248.

CONCEALMENT :

with intent to defraud, by a vendor or mortgagor of land, etc., his solicitor or agent, of anything material to the title, or any encumbrance, 394.

saving as to civil rights of person aggrieved thereby, 394, 395.
of property, etc., by a debtor, 396-398.

CONCEALMENT OF BIRTH :

not triable at quarter sessions, 53.
definition and punishment of, 288, 289.
foetus when not to be deemed a child, 289.

CONSPIRACY :

what not triable at quarter sessions, 54.
where committed, 230.
definition of, 255.
punishment of, generally, 255.
to defraud, definition and punishment of, 391.
to bring a false accusation of offence against this Code, 344.
punishable on summary conviction, 344.
to pervert or obstruct the due course of justice, 344.
to obstruct or prevent lawful execution of criminal process, 345.
attempts to commit the said offence, 345.

CONSPIRACY AND PROTECTION OF PROPERTY ACT :

observations on, 420, 421.

CONSPIRING :

to commit treason, 259.
murder, 286.
procure abortion, 288.
defile, 292.

CONSTRUCTION :

of terms used in this Code, 3-6, 223-226.
rule for, of certain expressions contained in statutes not hereby repealed, 505, 506.

CONSULAR OFFICER :

- obtaining certificate from, 423, 424.
- sanctioning discharge of a seaman abroad, 423, 424.
- stating the fact and cause of leaving a seaman abroad, 424.
- duty of, when applied to, to grant authorization, 424.
- power to, to administer an oath, 424.

CONTAGIOUS DISORDER :

- exposing any person in a public thoroughfare, knowing that he is suffering from, 417.
- exposing himself in public, knowing that he is suffering from, 417, 418.

CONTEMPT AGAINST THE SOVEREIGN :

- not triable at quarter sessions, 53.
- definition and punishment of, 264.
- existing law as to, 264.
- proviso as to, 264.

CONVERSION :

- fraudulent, of property. See *Theft*.
- by director, etc., of property of a body corporate or public company, 387, 388.

CONVICTION :

- previous, how proved, 201, 202.
- observations as to offences punishable on summary conviction becoming indictable by reason of, 443.

Co-OWNERS :

- offences by, 227.

CORONER :

- being under a legal duty to do so, fails to give due notice to a, that a body is awaiting inquest, 310.

CORONER'S INQUISITION :

- no one to be arraigned or tried on, 60.
- course to be pursued on, 59, 60.

CORPSES :

- preventing the burial of, and disinterring, 310.

CORROSIVE FLUID :

- injuring or attempting to injure by means of, 302.

CORRUPTION :

- of jurors, 345, 346.
- judicial, 410, 411.
- of other public officers, 412, 413.
- in relation to public offices, 414-416.

COSTS :

- of proceedings in Court of Criminal Appeal or High Court of Criminal Justice, regulated by Rules of Court, 30.
- when prosecutor may be ordered to pay, to the accused, 130, 131.
- mode of enforcing payment, 131.
- provisions as to orders for, in criminal trials, 455-461.
- by whom and how ascertained, 455, 456.
- observations upon the present law as to, 456, 457.
- upon whom order to be made, 457-459.
- where place of trial changed, 459.
- order for payment of, by accused, 459, 460.
- by prosecutor, 460, 461.
- mode of enforcing order for, 460, 461.
- provision as to, where plaintiff elects to accept payment into Court under a defence of tender in satisfaction, 484.
- money paid into Court may be applied towards payment of defendant's, 484.
- mode of enforcing payment of, 484.
- defendant to pay, where plaintiff accepts a sum paid into Court as amends, 484, 485.

COUNSEL :

- accused entitled to assistance of, 86, 87, 95, 142, 171, 172.
- addresses of, how regulated, 187-189.
- may be assigned where question of law reserved, 199.

COUNTY :

- definition of, 5.
- offence committed on boundary of, 231, 232.

COUNTERFEIT COIN. See *Coin*.

COUPON :

- fraudulently personating owner of, 369.

COURT :

- Judge sitting in Court to constitute a, 18.
- exercising criminal jurisdiction, place of sitting of, 49.

COURT, DIVISIONAL :

- sittings of, may be regulated by Rules of Court, 29.
- how constituted, 43.
- time for holding, 43.
- reserving questions of law for consideration of, 195-198.
- may grant new trial, 212.
- motion to, for a new trial, 212-214.
- appeal from, to Court of Criminal Appeal, 213.

COURT OF CRIMINAL APPEAL :

- establishment of, 11.
- constitution of, 11.
- ex-officio* Judges of, 11.

COURT OF CRIMINAL APPEAL—*continued.*

- additional Judges of, 13.
- salary of Judges of, 12.
- precedence of Judges of, 14.
- pension of Judges of, 14.
- jurisdiction of, 18.
- to be composed of not less than five Judges, 19.
- may sit in two divisions, 19.
- regulation of sittings of, by Rules of Court, 29.
- regulation of pleading, practice, or procedure in, by Rules of Court, 30.
- jurisdiction to be exercised by, 33.
- may sit and act at any time or place, 34.
- sittings of, 34.
- may sit during Long Vacation, 35.
- in what cases an appeal lies to, 148, 198, 213.
 - lies from, 19.
- reservation of questions of law arising on trial for consideration of, 195-199.
- giving leave to move for a new trial, 213.
- appeal to, from refusal of Divisional Court to grant a new trial, 213.

COURT FOR CROWN CASES RESERVED :

- cases pending in, 33.

COURT OF JUSTICE :

- fair reports of and comments on proceedings in a, privileged, 407.
- forgery of records, etc., of, 353.

COURTS :

- jurisdiction of criminal, notwithstanding offences not committed within their area, 57.

CREDIT :

- obtaining, by fraud, 401.

CRIME :

- definition of expression when contained in any statute not hereby repealed, 505, 506.

CRIMINAL INFORMATION :

- no person hereafter to be tried upon, 58.

CRIMINATE :

- himself, no person to be excused from answering on ground that it would tend to, 47.

CROP :

- of cultivated vegetable produce, setting fire to, 314.

CROSS-EXAMINATION :

- of witnesses for the prosecution, 95, 96.

CROWN :

- unable to dispense or relieve from disabilities caused by corrupt acts in relation to public offices, 416.

CUMULATIVE SENTENCES :

when authorized, 241, 242.

CURRENT COIN :

definition of expression, 370, 371.

offences against. See *Coin*.

CUSTOMS :

officer of, when sanction of, necessary to the lawful discharge of a seaman or apprentice in a British possession, 423.

shooting at, when employed for the prevention of smuggling, 426.

assaulting, resisting, or obstructing, by force or violence, 427.

CUSTOMS ACT :

assembling together, armed, to aid or assist in landing, etc., goods liable to duty under any, 426.

to rescue same, 427.

any person lawfully apprehended for any offence relating to any, or to prevent lawful apprehension of same, 427.

two or more persons assembling together for the purpose of being concerned in landing, unshipping, carrying away, or concealing goods prohibited by, or liable to duty under any, 427, 428.

CUSTOMARY MARKS :

definition of expression, 365.

offences in relation to, 365-367.

forfeiture of property used in commission of offences relating to, 366, 367.

DANGER :

acts and breaches of duty tending to public, 417-419.

DATE :

for Code coming into force, 3.

DEATH :

punishment of, 235.

compulsion by threat of, when a defence, 248.

Court to pronounce sentence of, 283.

respiting sentence of, 283.

definition of expression "from which death results," 282.

DEATHS :

forging register of, 354.

certified copy of, or entry in, register of, 354.

DEBENTURES :

forgery of, 351.

DEBT :

incurring, by fraud, 401.

DECLARATION :

magistrate or justice authorized to take, 84, 85.

fraudulently making or transmitting a false, in relation to an election, 440.

DECLARATION OF TITLE ACT :

frauds against, 393, 394.

DEED :

fraudulently acknowledging, in the name of another, 370.

DEFAMATORY LIBEL. See *Libel*.

DEFECT :

in constitution or authority of Court immaterial upon trial for perjury committed in a judicial proceeding, 342.

DEFINITION :

of offences by statute and at common law, definitions in this Code substituted for, 7.

of terms, 3-6, 98, 102, 223, 227, 281, 291, 292, 331, 333, 334, 341, 348, 349, 364, 365, 399, 416, 417.

of expression "from which death results," 282.

"current coin," 370, 371.

"false or counterfeit coin," 371.

DELIVERY ORDER :

for goods, forgery of, 352.

DEPONENT :

provision where more than one, 62, 63.

illiterate, 63, 64.

DEPOSITION :

transmission of, where accused remitted for examination before another magistrate or justice, 69, 70.

definition of, 98, 102.

of the accused, meaning of, 102, 103.

inspection and copy of, pending remand, 105, 106.

present practice as to inspection and copy of, 106.

accused to be furnished with a copy of, on committal, without charge, 121.

transmission of, to place of trial, 123, 124, 128.

the like where place of trial changed, 150.

production of original or certified copy of, upon return of rule to show cause why accused should not be admitted to bail, 146, 147.

of any person unable to be present, or kept away, provision for reading on trial, 183-185.

DESTROYING :

- vessels of war, etc., of the sovereign, in time of war, 260.
- books, securities, etc., of a body corporate or public company with intent to defraud, 388, 389.
- by debtors, with intent to defraud, 398.

DESTRUCTIVE MATERIAL :

- discharging, near the person of the sovereign, 263.

DIRECTOR :

- receiving, etc., property of body corporate or public company, and fraudulently omitting entry thereof in books, 387, 388.
- fraudulently making, circulating, or publishing any false statement or account, 387, 388.
- destroying, altering, mutilating, or falsifying books, valuable securities, etc., of body corporate or company, 388, 389.
- making, etc., false entry or omitting any material particular in books of account, etc., 388, 389.
- of company, whether existing or intended, publishing or concurring in circulation of false prospectus, statement, or account, 389.
- destroying, mutilating, or falsifying any book, security, etc., of a company in course of winding up, 389, 390.
- making false entry in books of same, 390.

DISABILITIES :

- of person committing corrupt acts in relation to public offices, 415, 416.
- Crown unable to dispense or relieve from, 416.
- upon conviction for an offence followed by a sentence of death, penal servitude, or imprisonment with hard labour, 461, 462.

DISCHARGE :

- of accused when evidence insufficient to justify committal, 114, 115.
- not a bar to a subsequent inquiry, 115.

DISCHARGING :

- a seaman or apprentice abroad, without lawful authority, 423
- what sanction necessary before, 423.

DISCOVERY :

- of documents, etc., by prosecutor, 206, 207.

DISCRETION :

- abuse of, by public officers, judicial or otherwise, 413.

DISFIGURE :

- causing grievous bodily harm with intent to, or disable, 298.

DISFIGURED :

- being found at night, with criminal intent, 337, 338.

DISOBEDIENCE :

of any public statute at present an offence, 448.

DISORDERLY HOUSES :

suggestion as to, 445.

DIVIDEND :

fraudulently personating owner of, 369.

DIVISIONAL COURTS :

sittings of, may be regulated by Rules of Court, 29.

how constituted, 42.

time for holding, 43.

reserving questions of law for consideration of, 195-198.

may grant new trial, 212.

motion to, for a new trial, 212-214.

appeal from, to Court of Criminal Appeal, 213.

DOCK WARRANT :

forgery of, 352.

DOCKYARD :

setting fire to or destroying, in time of war, 260.

DOCUMENT :

definition of, 348.

forgery of, generally, 346-361.

relating to land or hereditaments, for the purpose of obtaining registration or declaration of title, forgery of, 351.

forming or evidencing title to land and hereditaments, forgery of, 352.

relating to the redemption of the land-tax, forgery of, 352.

mercantile, forgery of, 352.

relating to pay of officers and persons in the army, navy, or public service of the Crown, 355, 356.

DOCUMENTS :

compelling production of, in preliminary inquiry, 88-94.

the like on trial, 119, 120.

given in evidence in preliminary inquiry, provision for custody of, 116.

certified copy of, 116.

transmission of, to place
of trial, 123, 128.

offence which consists in publication of, where committed, 232, 233.

DOMINIONS :

of the sovereign includes the territorial waters adjacent thereto, 428.

DRILLING, ILLEGAL :

not triable at quarter sessions, 53.

definition and punishment of, 269, 270.

meeting for, may be dispersed, 270.

limitation of time for instituting prosecution for, 270.

DRUG :

administering, with certain criminal intents, 299.

DRUGGISTS :

register of, forgery of, 356.

DURESS :

impeding or interfering with the free exercise of the franchise by any voter by means of, 439.

DUTY :

violation of official, by public officer, 412.

EAVES-DROPPING :

an offence at common law, 445.

ELECTION :

fraudulent acts in relation to an, 434, 435.

impeding, neglecting, or interfering with the free exercise of the franchise by a voter, by fraud or force or threats, 438, 439.

wilfully neglecting or delaying the transmission or delivery of writ in Parliamentary, 435.

forging or fraudulently defacing or destroying a nomination paper used at an, 435.

delivering a nomination paper to returning officer, knowing it to be forged, at an, 435.

forging or fraudulently defacing or destroying a ballot paper used at an, 435.

the like to the official mark on a ballot paper used at an, 435.

without authority supplying a ballot paper to be used at an, 435.

fraudulently putting into a ballot box any paper other than an authorized ballot paper at an, 435.

fraudulently taking a ballot paper out of polling station at an, 435.

without authority destroying or interfering with any ballot box or papers then in use at an, 435.

attempting to commit either of the said acts, 435.

bribery at an, 436-438.

undue influence at an, 438, 439.

personation at an, 439, 440.

EMBARKING :

by false representations, a person to serve a foreign State at war with a friendly State, 429-431.

ENCUMBRANCE :

definition of term, 395.

ENDANGERING :

life, by poison, 300.

the safety of railway passengers by wilful act or omission, 300, 301.
by wanton means, 301.

acts or omissions endangering life, health, or property, 303-306.

ENDORSEMENT :

- of certain valuable securities, forgery of, 351.
- of mercantile documents, forgery of, 352.
- of a valuable security, forgery of, 352, 353.
- document required by any Act relating to merchant shipping, 356.

ENGLAND AND WALES :

- this Code only to apply to, 6.
- Berwick-on-Tweed to be deemed part of, 6.

ENGRAVING :

- plates, etc., in aid of forgery, 358.

ENLISTED :

- dealing with persons illegally, 434.

ENLISTMENT :

- foreign. See *Foreign Hostilities*.

ENTERING :

- a house or building at night with intent to commit an offence therein, 332, 333.

ENTERS :

- definition of expression, 334.

ENTRY :

- in any book or register, or other document evidencing the title to stock, forgery of, 351.

ERROR, WRITS OF :

- abolished, 59.

ESCAPE :

- from lawful custody, causing grievous bodily harm with intent to facilitate, 298.
- intentionally permitting, of prisoner in custody for offence punishable with death or penal servitude, 401, 402.
- the like for offence otherwise punishable, 402, 403.
- from lawful custody, 403, 404.
- aiding, 404.
- conveying unauthorized articles into a prison with a view to facilitate, 404.
- or aiding same, limitation of punishment for, 404.
- of a prisoner, negligently permitting, 405.
- not an offence if person permitting retakes person escaping before being prosecuted, 405.
- assisting prisoners of war to, 405, 406.

EVIDENCE :

- present practice as to calling on trial additional, 162.
- improper rejection or exclusion of, ground of application for new trial, 210.

EVIDENCE—*continued*.

- improper reception of, ground of application for new trial, 210.
- not adduced on trial, when ground for new trial, 211.
- what, necessary in case of perjury or subornation of perjury, 343.
 - making false statements to or before any person by law authorized to receive the same, 343.
- forgery of document used or intended to be used as, 353.

EXCHEQUER BILL :

- definition of, 348.
- paper, definition of, 349.
 - making, etc., instruments for making, 357.
- forgery of, 350.
 - offences preparatory to, 357, 358.

EXCISE :

- officer of the, shooting at, when employed in the prevention of smuggling, 426.
- assaulting, resisting, or obstructing by force or violence, 427.

EXCLUDING :

- public from place where preliminary inquiry held, 51.

EXCUSE :

- what does or does not constitute an, for acts which would otherwise be unlawful, 247-250.
- duty of proving, to be on person setting up same, 250.

EXPEDITION :

- fitting out a naval or military, to proceed against the dominions of a friendly State, 432.

EXPLOSIVE MATERIAL :

- discharging, near the person of the sovereign, 263.
- injuring or attempting to injure persons by means of, 301.
- placing, near building, etc., with intent to injure any person, 302.
- blowing up buildings by, 315.
- attempting to blow up buildings by, 315, 316.

EXPORTING :

- counterfeit coin, 374.

EXPOSING :

- for sale obscene books, prints, etc., 311, 312.
- in a public highway, any person, knowing that he is infected with a contagious disorder, 417.

EXTORTION :

- of property, etc., by violence or injury to the person, property, or reputation, 335.
- by threatening to accuse of offence, 335, 336.
- by publishing, or threatening to publish, or offering to abstain from publishing a libel, 336.

FACTORY YARD :

of the sovereign, setting fire to, or destroying, in time of war, 260.

FAIR :

comment upon persons and things submitted to public criticism, privileged, 408, 409.

report of and comments on proceedings in Parliament privileged, 407.
same in Courts of justice, 407.

discussion of matters of public interest privileged, 408.

FALSE ACCOUNTS :

officers of a body corporate or public company fraudulently making, publishing, or circulating, 387, 388.

by clerks or servants, 390.

FALSE CERTIFICATE :

public officers giving, 411, 412.

FALSE CLAIM :

on a debtor's estate, 400.

FALSE COPY OR ENTRY :

public officer certifying as true a, 411, 412.

FALSE NEWS :

citing or publishing, concerning the great men of the realm, observations as to offence of, 447.

FALSE PRETENCE :

by any, fraudulently inducing any person to deliver or transfer any property, 379.

enter into a contract, 379.

obtaining credit by, 401.

obtaining execution, etc., of a valuable security by a, 387.

FALSE REPRESENTATIONS :

procuring a female under the age of twenty-one years to have carnal connection with any male by means of, 291.

embarking a person to serve a foreign State at war with a friendly State by means of, 429-431.

FALSE SCALES, WEIGHTS, OR MEASURES :

cheating by means of, 391.

FALSIFICATION :

of books relating to the public funds, 360.

by officers, etc., of a body corporate or public company, 388-390.

by clerks or servants, 390.

debtors, 398.

FALSIFICATION—*continued*.

of accounts by clerks and servants, 390.

title, 394.

pedigree, upon which title to land, etc., does or may depend, by vendor or mortgagor, his solicitor or agent, 394.

saving as to civil rights of person aggrieved thereby, 394, 395.

FEAR :

putting any person, or his wife or child, in, to compel him to do or abstain from certain acts, 419, 420.

FELONY :

term of, abolished, 59.

definition of expression when contained in any statute not hereby repealed, 505, 506.

FERN :

setting fire to, 314.

FICTITIOUS PLAINTIFF :

suings in the name of a, observations as to offence of, 443.

FIGHTING :

with any person, intending to kill or inflict grievous bodily harm, 306.

FINES :

may be ordered to be paid by instalments, 238.

excessive, unlawful, 238.

abolition of imprisonment for inability to pay, 239.

enforcement of, 239.

present law as to, 239.

FIRE-ARMS :

producing, pointing, or discharging at, or leaving near the person of the sovereign, 263.

FISHERY :

injury to a private, 321.

FLOGGING :

when authorized to be inflicted, 236, 298, 299, 301, 302.

no female to be subject to, 236.

no person to be flogged whose age does not exceed sixteen, 236.

punishment of, how inflicted, 236, 237.

not to be inflicted when it may endanger life, 237.

within what period to be inflicted, 237, 238.

may be cumulative upon other punishment, 238.

FŒTUS :

not having reached the period at which it might have been born alive, not to be deemed a child, 289.

FOLLOWING :

- a person persistently from place to place, with a view to compel him to do or abstain from certain acts, 420.
- in a disorderly manner, 420.

FOOD :

- mixing unwholesome ingredients in, 418.
- selling, or exposing for sale, unwholesome, 418.

FORCE :

- when the use of, justified, 248, 249.
- using or threatening to use, to a voter to induce or compel him to vote or refrain from voting at an election, 438, 439.

FORCIBLE ENTRY AND DETAINER :

- definition and punishment of, 313.

FOREIGN HOSTILITIES :

- interference in, not triable at quarter sessions, 54.
- unlawful interference in, 428-434.
- enlistment in the military or naval service of a foreign State at war with a friendly State, 429.
- quitting the sovereign's dominions with a view to, 429.
- taking illegally enlisted persons on board ship, 429.
- illegal shipbuilding in aid of, 430.
- proviso thereon, 430, 431.
- embarking persons in aid of, by false representations as to service, 431.
- adding to the warlike equipment of foreign ships, 432.
- fitting out military or naval expeditions, 432.

FOREIGN SHIPS :

- adding to the warlike equipment of, 432.

FOREIGN STATE :

- without lawful authority, enlisting in the military or naval service of, 429.
- quitting the sovereign's dominions with a view to enlisting in the military or naval service of, 429.
- inducing any person to quit for the same purpose, 429.

FOREIGNER :

- interpretation of evidence to or of a, 64.
- proposing to make an affidavit, 65.

FORFEITURE :

- of property used in commission of offences in relation to trade and customary marks, 366, 367.
- of right to public office or employment obtained by corrupt acts, 415, 416.

FORFEITURE OF SHIPS, etc. :

proceedings for the condemnation and, not to be commenced without sanction of the Secretary of State, 433.

to be taken in the Admiralty Division, 433.

proceedings for, not compulsory because of criminal prosecution, 434.

FORGERY :

not triable at quarter sessions, 53.

definitions of, 346-348.

document need not be complete or binding in law to constitute, 349.

upon accusation for, not necessary to prove an intent to defraud any particular person, 349.

punishment of, 349-357.

preparations for, 357-359.

using probate or letters of administration obtained by, 359, 360.

of attestation to power of attorney to transfer stock, etc., 361.

of a nomination paper at an election, 435.

a ballot paper, or the official mark on same, 435.

FORMS :

in the Appendix hereto, or forms substantially similar, valid, 51, 52.

FRAUD :

obtaining the signature to, or execution of, a document by, 347.

affecting the public, committed by public officer, 413, 414.

FRAUDS :

by officers, etc., of public companies, 387-390.

FRAUDULENT :

debtors, offences by, 396-401.

assignment of property, 401.

removal of property, 401.

FRIENDLY STATE :

definition of, 428.

FUNDS :

fraudulently affecting the market price of, 391.

FURIOUS DRIVING :

causing bodily harm by, 301.

FURZE :

setting fire to, 314.

GAME :

offences in relation to, observations as to the existing law, 446, 447.

GAMES :

of chance or skill, etc., cheating at, 392.

GAS :

breach of duty or contract whereby inhabitants of any place deprived of their supply of, 419.

GORSE :

setting fire to, 314.

GRAND JURY :

abolition of presentment by, 153.

no person to be apprehended or tried upon presentment by, for any offence committed after coming into force of this Code, 154.

GRIEVOUS BODILY HARM :

causing, with intent to maim, disfigure, or disable, definition and punishment of, 297, 298.

with intent to facilitate escape from lawful custody, 297, 298.
attempts to cause, with the like intents, 298.

with intent to commit, or to assist or facilitate the commission of, offence, 299.

with intent to resist or prevent lawful apprehension, 299.

attempting to cause, by means of explosive or corrosive substances, 302.

GUILTY :

plea of, equivalent to conviction, 177.

GUNPOWDER :

causing, to explode with intent to injure any person, 302.

blowing up, etc., buildings, etc., by, 315.

attempting to blow up buildings, etc., by, 315, 316.

manufacturing or knowingly being in possession of, for any criminal purpose, 316.

HALL-MARKS :

forging die used for, 367.

fraudulently marking gold or silver wares with, 367.

transposing, etc., genuine, with intent to affix to other wares, 367.

affixing, to other substances, 368.

HEALTH :

punishment of acts and omissions tending to endanger, 303-306.

of the public, endangering, 417, 418.

mixing ingredients in food injurious to, 418.

HEATH

setting fire to, 314.

HERESY :

observations as to obsolete statutes which, *inter alia*, proscribe, 447, 448.

HIDING :

tools, clothes, etc., with a view to compel the owner to do or abstain from certain acts, 420.

HIGH COURT OF CRIMINAL JUSTICE :

definition of, 4.

constitution of, 12.

three Judges to be appointed, to be styled Judges of, 12.

duly constituted notwithstanding vacancy, 13.

Judges of, from whom selected, 12.

salary of, 12, 15.

pension of, 13-15.

office of, how vacated, 13.

tenure of office of, 13, 14.

rank and precedence of, 15.

jurisdiction of, 16, 17, 52.

may be exercised in Court or Chambers, 17, 18.

sittings of, may be regulated by Rules of Court, 29.

pleading, practice, and procedure of, may be regulated by Rules of Court, 30.

jurisdiction to be exercised by, 33.

may sit and act at any time or place, 34.

shall have jurisdiction to try all criminal offences, 52.

appeal to, from Courts of inferior criminal jurisdiction, 144-148.

from, to Court of Criminal Appeal, 148, 198, 213.

HIGH COURT OF JUSTICE :

definition of, 4.

service as Judge of, to be reckoned in computing time entitling to pension, 14.

HIGH SEAS :

jurisdiction as to offences committed on, 233.

HIGHWAY :

exposing himself or any other person suffering from a contagious disorder in a public, 417, 418.

HIGHWAYS :

obstructing or neglecting to repair, observations as to offence of, 445.

HINDERING :

wrongfully, any person in the use of tools, etc., with a view to compel any person to do or abstain from particular acts, 420.

HOMICIDE :

provision for more speedy trial of, by persons subject to the Mutiny Act, 152, 153.

HOSTILITIES :

interference in foreign. See *Foreign Hostilities*.

HOUSE :

- breaking and entering, at night, with intent to commit an offence therein, 331, 332.
- breaking out of, at night, having committed an offence therein, 332.
- breaking and entering, by day, and committing an offence therein, 332.
- breaking out of, by day, having committed an offence therein, 332.
- breaking and entering a, by day, with intent to commit an offence therein, 332, 333.
- being found in, at night, with intent to commit an offence therein, 338.

HOUSE OF LORDS :

- in what cases appeal may be brought to, 19, 20.

HOUSEBREAKING :

- definition and punishment of, 332.
- with intent to commit an offence, 332.
- instruments, being found by night armed with, 337, 338.

HUSBAND :

- dealing with property of wife, 228.
- persons assisting or inciting, to commit an offence in relation to property of wife, 229.

HUSBAND OR WIFE :

- of an accused a competent and compellable witness, 48.
 - may be called and examined either for prosecution or defence, 48.
- in what cases, may be examined for or against an accused by the present law, 48.

IDIOT :

- definition of, 246.
- incapable of crime, 246.

IGNORANCE :

- of fact, position of accused as to acts under, 229, 230.
- of law no excuse, 229.
 - may be relevant to the question of intent with which act done, 229.

IMPLEMENT :

- housebreaking, being found at night having in his possession, 337, 338.

IMPORTING :

- counterfeit coin, 372.

IMPRESSION :

- of seals, forgery of, 350.

IMPRISONMENT :

- of three kinds, 235.
- how inflicted, 235, 236.

IMPRISONMENT—*continued*.

Court to specify whether imprisonment to be with or without hard labour, 235.

no person to be subject to imprisonment with hard labour, save when same expressly authorized, 235.

as a misdemeanant, 235, 236.

limitation of sentence of, 241.

what punishment authorized where person convicted of offences for each of which he is liable to two years' imprisonment, 241.

for some one or more of which he may be sentenced to penal servitude and for others to imprisonment, 241, 242.

INCAPABLE :

of crime, who are deemed, 246, 247.

INCITEMENT :

to commit an offence generally, 252, 253.

commit treason, 259.

murder, 286.

procure abortion, 288.

INDECENCY :

definition and punishment of public, 310, 311.

INDECENT OBJECT :

public exhibition of, 311.

INDICTABLE OFFENCE :

definition of expression when contained in any statute not hereby repealed, 506.

INDICTMENT :

definition of expression when contained in any statute not hereby repealed, 506.

INFANT :

when deemed incapable of crime, 246.

exposing and endangering the life or health of an, 304, 305.

INFANTICIDE :

not triable at quarter sessions, 53.

definition and punishment of, 284.

upon trial of any person for, not necessary to know that child was completely born alive, 284.

INFECTION. See *Contagious Disorder*.

INFORMATION :

transmission of, where accused remitted for examination before another magistrate or justice, 69, 70.

any person may lay an, against an offender, 70.

INFORMATION—*continued*.

- in writing and on oath required, prior to a warrant or summons being granted, 72.
- form of same, 72, 511.
- the like prior to issuing a search-warrant, 82.
- form of same, 82, 516.
- no objection to be allowed for defect of form in, 83, 84.
- accused entitled to inspect and be furnished with copy of, 85.
- except in certain cases, 85.
- proceedings not to be invalid by reason of refusal or omission to grant inspection or furnish copy of, 85, 86.
- summons to compel attendance of witness on laying, 88, 520.
- witness contumaciously refusing to attend and depose to, 89-94.
- transmission of, to place of trial, 123, 128.

INJUNCTION :

- application of, to acts now indictable as common nuisances, 445.

INJURIES :

- to buildings by rioters, 269.

INNKEEPER :

- refusing food and lodging to a traveller without reasonable excuse commits an offence at common law, 445.

INNUENDO :

- libel conveyed by, 406.

INQUEST :

- by grand jury, abolition of, 153.
- offences in relation to coroner's, 310.

INQUIRY :

- publication of matter in the course of an, privileged, 407.

INSANITY :

- accused acquitted on ground of, may be ordered to be detained during Her Majesty's pleasure, 192.
- definition of, 246.
- when an offence, 246.

INSINUATION :

- libel conveyed by, 406.

INSPECTION :

- of documents, etc., by accused, 207, 208.
- disobedience of order for, 208, 209.
- of warrant, charge-sheet, information, or deposition, order may be made authorizing, when an action or other proceeding is pending or contemplated by party affected thereby, 485, 486.

INSTRUMENTS :

- for coining, making, mending, buying, selling, or having in the custody or possession, 373.
- unlawfully convèying, used in the coining of current coin out of the Mint, 373.

INTENT :

- to defraud a particular person, when not necessary to prove, 349.

INTERFERENCE IN FOREIGN HOSTILITIES. See *Foreign Hostilities*.

INTERPRETATION :

- of evidence, 64, 65.
- where defendant mute, but can be made to understand proceedings and make his defence, 172, 173.

INTERPRETERS :

- appointment or duties of, 27, 28.
- where to perform their duties, 28.
- to be sworn, 65.

INTIMIDATION :

- of a voter to coerce him in the free exercise of his franchise, 438, 439.

IRONY :

- libel conveyed by, 406.

JESUITS :

- observations as to obsolete statutes by which, *inter alia*, the coming into or remaining in this realm of, etc., an offence, 447, 448.

JUDGES :

- additional, of Court of Criminal Appeal, 12.
- three to be appointed, 12.
- from whom to be selected, 12.
- salary of, 12, 13.
- charged on Consolidated Fund, 15.
- office of, how vacated, 13.
- tenure of office of, 13, 14.
- pension of, 14.
- charged on Consolidated Fund, 15.
- computation of service entitling to, 14.
- rank and precedence of, 14, 15.
- of High Court of Criminal Justice to have jurisdiction to try all offences, 52.
- duty of, in reference to an accused when under examination, 181, 182, 183.
- summing up by, 190.

JUDGMENT :

- person may be ordered to come up for, if and when called upon, 199.
- admitting such person to bail, 200.
- such person may require Court to pass sentence, 200, 201.
- limitation of time within which sentence may be passed on such person, 201.
- fraudulently acknowledging, in the name of another, 370.
- fraudulently concealing or removing property within two months before any unsatisfied, 401.

JUDICIAL CORRUPTION, 410, 411.

JUDICIAL PROCEEDING :

- definition of expression, 341.
- perjury committed in the course of a, 340, 341.
- counselling or procuring a person to commit, 340, 341.
- publication of matter in the course of a, privileged, 407.

JURISDICTION :

- saving of, of Court of Lord High Steward, 9.
- of the High Court of Criminal Justice, 16, 52.
- transfer of, of existing Courts, 15, 16.
- hereby conferred, how exercised, 16, 17.
- of criminal Courts, although offences not committed within their area, 55.
- conferred by 20 & 21 Vict. c. 43, so far as the same relates to England and Wales, transferred to the High Court of Criminal Justice, 147, 148.

JUROR :

- when a, may be excused, 176.
- fining, for non-attendance, 467, 468.
- mode of enforcing fines, 468.
- time within which fines to be levied, 469.
- notice to be given to any, fined for non-attendance, 467.
- remission of fines on, 469.
- not to be liable to fine for non-attendance unless summons served six clear days beforehand, 469, 470.
- limitations as to service as a, 472.

JURORS :

- corruption of, 345, 346.
- attempting to corrupt, 345, 346.
- remuneration of, 465.
- at quarter sessions, 467.
- officer to make out chief panels where, summoned from different counties, 470, 471.
- publication of same, 471.
- balloting for, 471, 472.

JURY :

power to direct trial to be had before a special, common, or mixed, 149.

subject to what conditions such order may be made, 150.

what verdict a, may find, 157.

panel, prosecutor and accused entitled to inspect and be furnished with a copy of, 161.

to be called in presence and hearing of accused, 173.

challenge of, 173-176.

when challenge of, to be allowed, 175.

appointment of triers, 175, 176.

giving accused in charge of, 178.

may be ordered by Court to be kept together or to return to their homes pending adjournment of trial, 186.

when allowed to separate, to be admonished and sworn, 186.

officer in charge of, to be sworn, 186.

reasonable accommodation to be provided for, 186, 187.

may retire to consider their verdict, 190, 191.

to be allowed fire, lights, and reasonable refreshment, 191.

what verdict, may find, 191.

if unable to agree, may be discharged, 193.

in what cases the, may be discharged, 194, 195.

qualification, summoning, and remuneration of, 465-473.

definition of special, 465.

common, 465.

mixed, 465.

remuneration of, 465.

number of, to be empanelled in all criminal trials, 466.

special, to consist of special jurors only, 466.

to be sworn or make solemn affirmation, 466.

form of oath or affirmation, 466.

verdict of, must be unanimous, 496.

Judges to issue precepts to sheriffs to summon, 466, 467.

duty of sheriffs to apply for precepts, 467.

to obey same, 467.

at quarter sessions to be summoned as at present, 467.

sheriffs to cause panels of, to be prepared and exhibited, 470.

to transmit same, and copies thereof, to officer of Court, 470.

copy panel to be publicly exhibited prior to and throughout the session, 470.

officer of the Court to make out chief panels where jurors summoned from different counties, 470, 471.

publication of chief panels, 471.

copy panel of, to be annexed to every Act of Accusation, 471.

mode of balloting for, 471, 472.

to be balloted for, 472.

JURY—continued.

may try several Acts of Accusation in succession, 472.

limitation as to service on, 472.

Court or Judge may direct trial to be had before a special or mixed, 472.

in a case involving scientific evidence of exceptional difficulty, to be in part composed of jurors possessing special scientific knowledge, 472.

JUSTICE :

conspiracy to pervert or obstruct, 344, 345.

forgery of document with intent to prevent due course of, 357.

JUSTICE OF THE PEACE :

definition of, 5.

saving as to summary jurisdiction of, 8, 9.

for two adjoining counties may act in either, 49, 50.

for any county at large, or riding or division of county, may act for it in adjoining city, 50.

may exclude public from place where preliminary inquiry held, if the interests of justice so require, 51.

the like in the case of witnesses until called, 51.

not to exclude the public generally when exercising summary jurisdiction under this Code, 51.

anything authorized to be done by a single magistrate or, may be done by justices in petty sessions, 52.

anything authorized to be done by or to be under the hand of a magistrate or, may be done by or be under hand of chairman of petty sessions, 52.

county and district within which he may act, 70.

saving as to jurisdiction of, created by charter or statute, 70.

in what case to issue a warrant or summons, 71-73.

persons taken into custody or apprehended on warrant to be at once taken before, 77.

may issue a search-warrant, 81.

authorized to administer oath or affirmation, or to take affidavit or declaration, 84.

to hold preliminary inquiry, 94.

to cause evidence taken in the preliminary inquiry to be read over, 96, 116.

to sign statement of witness, 98, 116.

to sign examination of accused, 102.

may take the evidence of any person, whether or not proposed to be called on either side, 103.

authorized to take bail fixed by another magistrate or justice, 110-112, duty of, in relation to committal or discharge of accused, 116-118. 119-125.

JUSTICE OF THE PEACE—*continued.*

to what Court to commit, 119.

endorsing certificate of expenses of witness attending before him
120, 121.

duty of, to transmit depositions, etc., 123, 124, 128.

power to assign counsel to accused unable, by reason of poverty, to
retain solicitor, etc., 124.

to fix number of sureties and amount to be entered into by prose-
cutor as a condition of preferring an Act of Accusation after
dismissal of the accused, 127.

upon same being duly entered into, to cause notice to be served
on accused, 127, 128.

form of notice, 128, 531, 532.

transmission of duplicate of same, 128.

to take examination of person dangerously ill and not likely to
recover, 132-135.

to cause notice to be served on person against whom same to
be taken, 133.

if such person in custody, to be brought up, 133.

mode of conducting examination, 133-135.

to transmit same, 134, 135.

power of, to remand to next petty sessions any person charged
with any offence which justices in petty sessions have jurisdiction
to convict summarily of, 141.

appeal from, to the High Court of Criminal Justice, 144, 145.

JUSTICES :

for adjoining counties may act for either county while in the other,
49, 50.

for a county or division of a county may act for it in an adjoining
city or place having an exclusive jurisdiction, 50.

jurisdiction of, included in any Commission of Oyer and Terminer or
Gaol Delivery, 52.

in petty sessions, summary jurisdiction of, 136-143.

JUSTIFICATION :

what does or does not constitute, 247-250.

onus of proving, on person setting up same, 250.

for publication of a libel, what constitutes, 407-409.

JUVENILE OFFENDERS :

jurisdiction of magistrate or justices in petty sessions in case of,
138-141.

may be sent to a reformatory, 140, 239, 240.

KINGSTON-ON-HULL :

county of York to be deemed next adjoining county to the county of
the town of, 163, 164.

LAND :

- forgery of documents relating to, for the purpose of obtaining registration or declaration of title, 351.
- forming or evidencing title to, 352.
- definition of term, 395.
- fraud to obtain the registration, etc., of, 392, 393.
 - anything obtained by, null and void except as against a purchaser of valuable consideration without notice, 393.
- fraudulently procuring, etc., an order of the Chancery Division of the High Court of Justice in relation to, 393.

LAUDANUM :

- administering, etc., with certain criminal intents, 299.

LETTER :

- sending, threatening to murder, 286, 287.
 - to burn or destroy, 317.
- threatening violence or injury to person or property, 335.
 - to accuse of offence, 336.

LETTERS OF ADMINISTRATION :

- using, obtained by forgery or perjury, 359.

LIABILITY :

- incurring, by fraud, 401.

LIBEL :

- not triable at quarter sessions, 54.
- on foreign princes and dignitaries, existing law as to, 262.
- attempting to extort by publication of, 336.
 - by threatening to publish or offering to abstain from publishing, 336.
- definition of a defamatory, 406.
- punishment for publishing, 406.
 - knowing it to be false, 406.
- what constitutes a justification or defence for the publication of, 407-409.
 - publication of anything exhibited or read in the course of a judicial proceeding or authorized inquiry privileged, 407.
 - matter contained in a petition to Parliament, 407.
 - document published by order or under the authority of Parliament, 407.
 - fair reports and comments on proceedings in Parliament, 407.
 - the like on proceedings in a Court of justice, 407.
 - matter true in fact, 407, 408.

LIBEL—*continued*.

plea of justification upon ground that libel true and published for public benefit, 170, 408.

when such justification may not be inquired into upon trial for, 408.

privileged communications, 408.

publications made in self-justification or defence, 408.

fair discussion of matters of public interest, 408.

comment upon persons and things submitted to public criticism, 408, 409.

protection of proprietor of a periodical publication in case of defamatory matter published therein without his knowledge and authority, 409.

what constitutes authority, 409.

protection to persons innocently selling books and other publications which contain defamatory matter, 409, 410.

when other libels may be given in evidence upon trial for, 410.

LICENCE :

marriage, forgery of, 355.

issued by any Government department, forgery of, 355.

LIFE :

endangering, by certain acts or omissions, 305, 306.

unlawful acts endangering, 417-419.

LIGHTHOUSE :

malicious injury to, 320.

LIGHT-SHIP :

injuring, removing, or destroying a, 319.

LIMITATION OF TIME :

within which private person may institute prosecution, 55, 56.

under the existing law, 56.

for instituting prosecution for anything done or reasonably claimed to have been done under the authority of this Code, 477.

for bringing action, 479.

LOCKS :

malicious injuries to, 320.

LORD CHANCELLOR :

what term includes, 4.

may increase salary of any existing officer whose duties increased, 22.

may abolish officers upon vacancy occurring, if unnecessary, 23.

shall fix salary, etc., of Chamber and Judge's clerks, 24, 25.

may appoint Chamber clerks, 24.

to appoint and determine duties, remuneration, etc., of shorthand writers and interpreters, 27, 28.

LORD CHIEF BARON OF THE EXCHEQUER :

to be *ex-officio* Judge of Court of Criminal Appeal, 11.

LORD CHIEF JUSTICE OF ENGLAND :

to be *ex-officio* Judge of Court of Criminal Appeal, 11.

to be president of Court of Criminal Appeal, 14.

LORD CHIEF JUSTICE OF THE COMMON PLEAS :

to be *ex-officio* Judge of Court of Criminal Appeal, 11.

LORD HIGH STEWARD :

saving of jurisdiction of Court of, 9.

LORDS JUSTICES OF APPEAL :

to be *ex-officio* Judges of Court of Criminal Appeal, 12.

LUNATICS :

observations as to penal provisions contained in statutes for the care and regulation of, 448.

MACHINERY :

rioters demolishing, 268.

injuring, 269.

attempts to injure, by gunpowder, etc., 315, 316.

MAGAZINE :

setting fire to or destroying, in time of war, 260.

MAGISTRATE :

definition of, 5.

saving as to summary jurisdiction of, 8, 9.

may exclude public from place where preliminary inquiry held, if the interests of justice so require, 51.

the like in the case of witnesses until called, 51.

not to exclude the public generally when exercising summary jurisdiction under this Code, 51.

county and district within which he may act, 70.

saving as to jurisdiction of, created by charter or statute, 70.

in what case to issue a warrant or summons, 71-73.

persons taken into custody or apprehended on warrant to be at once conveyed before, 77.

may issue a search-warrant, 81,

authorized to administer oath or affirmation, or to take affidavit or declaration, 84.

to hold preliminary inquiry, 94.

to cause evidence taken in preliminary inquiry to be read over, 96, 116.

to sign statement of witness, 98, 116.

to sign examination of accused, 102.

MAGISTRATE—continued.

- may take the evidence of any person whether or not proposed to be called by either side, 103.
- authorized to take bail fixed by another magistrate or justice, 110-112.
- duty of, in relation to committal or discharge of accused, 116-118, 119-125.
- to what Court to commit, 119.
- endorsing certificate of expenses of witnesses attending before him, 120, 121.
- duty of, to transmit depositions, etc., 123, 124, 128.
- power to assign counsel to accused unable, by reason of poverty, to employ solicitor, etc., 124.
- to fix number of sureties and amount to be entered into by prosecutor as a condition of preferring an Act of Accusation after dismissal of the accused, 127.
- upon same being duly entered into, to cause notice to be served on accused, 127, 128.
- form of notice, 128, 531, 532.
- transmission of duplicate of same, 128.
- to take examination of person dangerously ill and not likely to recover, 132-135.
- to cause notice to be served on person against whom same to be taken, 133.
- if such person in custody to be brought up, 133.
- mode of conducting examination, 133-135.
- to transmit same, 134, 135.
- summary jurisdiction of, in case of persons pleading guilty to offences which courts of quarter sessions have jurisdiction to try, 136-143.
- appeal from, to the High Court of Criminal Justice, 144, 145.

MAIL :

- stopping, with intent to rob or search, 339.

MAIM :

- causing grievous bodily harm with intent to, 298.

MAIMING :

- one's self, or another with his consent, 303.

MAINTENANCE :

- observations as to offence of, 443.

MALICIOUS INJURIES :

- to property by gunpowder, 315, 316.
- ships, 317-319.
- lighthouses, sea and river banks, bridges, etc., 319-322.
- salmon rivers, fisheries, mill-ponds, etc., 321, 322.
- railways and telegraphs, 322, 323.
- mines, 323-325.

MALICIOUS INJURIES—*continued*.

- machinery and goods in process of manufacture, 325, 326.
- property in places of public resort, 326, 327.
- toll-bars, 327, 328.
- trees, etc., in private parks and grounds, 328, 329.
- not otherwise provided for, 329, 330.
- rule of evidence applicable to, 330, 331.

MANAGER :

- of a body corporate or public company, offences by. See *Director*.

MANAGING OWNER :

- of British ship sent to sea in unseaworthy state, criminal responsibility of, 422.

MANSLAUGHTER :

- not triable at quarter sessions, 53.
- definition and punishment of, 283.

MAN-TRAPS :

- unlawfully setting, etc., 302, 303.

MARKET PRICE :

- fraudulently affecting, of any fund, stock, share, or merchandise, 391.

MARRIAGE LICENCE :

- forgery of, 355.

MARRIAGES :

- forgery of register of, 354.
- certified copy of, or entry in register of, 354.

MASTER :

- of a British ship knowingly taking to sea an unseaworthy ship, 422.
- wrongfully forcing a seaman or apprentice on shore, 423.
- discharging a seaman or apprentice abroad, 423, 424.
- leaving a seaman or apprentice behind, 424.
- taking illegally enlisted persons on board, 429, 430.

MASTER OF THE ROLLS :

- to be *ex-officio* Judge of Court of Criminal Appeal, 11.

MEDICAL TREATMENT :

- omission to use an ordinarily reasonable amount of knowledge, skill, and attention when administering, 282, 305.
- death resulting from, not employed in good faith, or employed without ordinarily reasonable skill, etc., 282.

MEMBER :

- destroying, altering, mutilating, or falsifying book or security belonging to a body corporate or public company, 388.
- making false entry in, or omitting any material particular from, any book, etc., of a body corporate or public company, 389.

MERCHANDISE :

fraudulently affecting the public market price of, 391.

MERCHANT SHIPPING ACTS :

forgery of documents required by, 356.

MERCHANTS :

obtaining sanction of two resident, prior to discharging or leaving behind a seaman or apprentice abroad, 423, 424.

power to inquire into grounds of proposed discharge, and to administer an oath, 424.

MESSAGE, TELEGRAPHIC :

stealing a, 382.

disclosing or intercepting contents of, 416.

definition of expression, 417.

MILL-PONDS :

malicious injuries to, 322.

MINE :

rioters demolishing or destroying any structure, etc., used in conducting the business of any, 268.

any bridge, waggon-way, or truck
for conveying minerals from, 268.

rioters injuring the like, 266.

setting fire to, 314.

malicious injuries to, 323-325.

conveying water into, 324.

MINT :

unlawfully conveying instruments, bullion, etc., out of the, 373.

MISDEMEANOUR :

term abolished, 59.

definition of expression when contained in any statute not hereby repealed, 506.

MISDIRECTION :

ground of application for new trial, 211.

MISPRISION :

of treason, present law as to, 261, 262.

of felony, present law as to, 262.

MITIGATION OF PUNISHMENT :

appeal to the Court in, 194.

MONASTIC Vows :

observations as to obsolete statutes by which, *inter alia*, the coming into or remaining in England of persons bound by, an offence, 447, 448.

MONTH :

definition of term, 226.

MORTGAGEE :

definition of term, 395.

MORTGAGOR :

fraudulent concealment by, of anything material to title, 394.

falsifying pedigree on which the title to property does or may depend, 394.

definition of term, 395.

MOTION :

in arrest of judgment, grounds upon which a person committed may move, 193.

present practice upon conviction of felony, 193, 194.

MOTIONS, etc. :

requiring to be promptly heard during vacation, 44.

MOVABLE PROPERTY :

theft of, 377, 378.

MUNICIPAL ELECTION :

offences in relation to. See *Election*.

MURDER :

not triable at quarter sessions, 53.

definition and punishment of, 280-283.

existing law as to, 280.

definition of expression "unlawful act" in relation to, 281, 282.

"from which death results," in relation to, 282.

when on trial for, jury may find accused guilty of manslaughter, 282.

respite of woman convicted of, 283.

when a woman not to be convicted of, for causing the death of her child, 285.

MUTE :

procedure where accused stands, 172, 173.

MUTILATING :

books, securities, etc., of a body corporate or public company, with intent to defraud, 388.

by clerks or servants, 390.

debtors, 398.

MUTINY :

stirring up or inciting any person serving in the forces of the Crown to, 270.

endeavouring to create an assembly with a view to, 270.

MUTINY ACT :

this Code not to affect provisions of, 9.

provision for more speedy trial of homicide by persons subject to, 152, 153.

NAVY :

officer of the, shooting at, when employed for the prevention of smuggling, 426.

assaulting, resisting, or obstructing by force or violence, 427.

NECESSARIES :

wilful omission to provide, by a person legally bound and able to do so, 303, 304.

NEGLECT :

culpable, when criminal, 281.

to provide necessities by a person legally bound and able to provide the same, 303, 304.

present law as to, 304.

permitting escape of prisoners by, 405.

when not an offence, 405.

of duty by public officers, 414.

NEGLECTING :

to repair bridges and highways an offence at common law, 445.

NEW TRIAL :

upon what grounds application for, may be made, 210, 211.

to whom application for, to be made, 211, 212.

appeal to Court of Criminal Appeal against refusal of Divisional Court to grant, 213.

Court may impose terms upon granting, 213.

not to be granted unless with consent of person convicted, 213, 214.

Court may give directions as to, 214.

procedure on, 214.

by whom may be applied for, 214.

when accused in custody may be brought up to apply in person for, 214.

all applications for, to be heard and determined in open Court, 214, 215.

time within which same must be made, 215.

arrest of execution of sentence, and power to admit to bail, pending, 215, 216.

Court may make an order for payment to accused of costs incurred by, 216.

NEWCASTLE-ON-TYNE :

Northumberland next adjoining county to the county of the town of, 164.

NIGHT :

person found at, having his face blackened or otherwise disfigured or disguised, 337, 338.

with housebreaking implements being found in house at, with intent to commit an offence therein, 338.

NOLLE PROSEQUI :

Crown not to enter, without consent of prosecutor, 58.

NOMINATION PAPER :

forging or fraudulently defacing or destroying, at an election, 435.
delivering a forged, to a returning officer knowing same to be forged, 435.

NORTHUMBERLAND :

to be deemed next adjoining county to the county of the town of Newcastle-on-Tyne, 164.

NOT GUILTY :

course to be pursued where accused pleads, 171.
when Court to direct verdict of, 191, 192.
verdict of, may not be disturbed, 211.

NUISANCES :

common, observations as to the existing law relative to, 445.

OATH :

term includes affirmation or declaration, 5.
unlawful, not triable at quarter sessions, 53.
form of, in criminal cases, 61, 62.
affirmation in lieu of, 63.
 equivalent to, 64.
magistrate or justice authorized to administer, 84.
not to be administered to an accused, 99, 183.
unlawful, definition and punishment of taking or administering, 250.
 present law as to taking or administering, 250, 271.

OBSCENE PUBLICATIONS :

definition and punishment of, 311, 312.

OBSOLETE LAWS :

observations as to, 442-444.

OBSTRUCTING :

riotously, the loading or unloading, or sailing or navigating, of a ship, 421.
by force or violence, officers, etc., duly employed for the prevention of smuggling, in the execution of their duty, 427.

OBSTRUCTIONS :

of bridges and highways an offence at common law, 445.

OBTAINING :

credit by fraud, 401.

OFFENCE :

- against the Penal Code, definition of, 4.
- committed prior to this Code coming into force, 8.
- place of commission of, 230-233.

OFFENSIVE :

- trades and manufactures, suggestion as to, 445.

OFFICE :

- any existing, may be abolished upon vacancy occurring, if unnecessary, 23.
- persons convicted of an offence followed by a sentence of death, penal servitude, or imprisonment with hard labour, disabled from holding any naval, military, or civil, or other public employment under the Crown, 461, 462.
- duration of disability, 462.

OFFICERS :

- what attached to Supreme Court of Criminal Judicature, 21.
- of existing Courts whose jurisdiction is transferred, 21, 22.
- rank, etc., of, 22.
- salary and pensions of, 22.
- to perform duties directed by Rules of Court, 23.
- compensation to, 26.
- status of, may be determined by Rules of Court, 27.
- Rules of Court may be made for governing duties of, 30.
- employed for the prevention of smuggling, shooting at, 426.
- assaulting, resisting, or obstructing by force or violence, 427.

OFFICES :

- corrupt acts in relation to public, 414-416.
- disabilities attending commission of, 415, 416.

OFFICIAL DUTY :

- violation of, by public officer, 214.

OMISSION :

- what and when criminal, 251, 252, 255, 281, 282, 300, 301, 303-306.

OPPRESSION :

- by persons in authority, 413.

ORDER :

- of Court or Judge to bring up a prisoner to give evidence, 61.

ORDER IN COUNCIL :

- Rules of Court may be made by, 29.
- annulled by, 31.
- to be laid before Parliament, 37.
- to have same effect as if enacted herein, 40.

OUTLAWRY :

in criminal cases abolished, 49.

OWNER :

criminal responsibility of managing, of a British ship sent to sea in unseaworthy state, 422.

of a ship knowingly taking on board illegally enlisted persons, 429.

OWNERS :

of property, fraudulently personating, 368-371.

PANEL :

prosecutor and accused entitled to copy of jury, 161.

when new, to be returned, 168, 176.

PARLIAMENT :

saving of privileges of High Court of, 9.

publication of matter by order or authority of, privileged, 407.

fair report of proceedings in, privileged, 407.

wilfully neglecting or delaying to transmit a writ for the election of a member of, 435.

PARLIAMENTARY ELECTIONS :

offences in relation to, 436-440.

PARTIES :

to an offence, who are, 250, 251.

attempt to commit an offence, who are, 249.

PARTNERSHIP :

offences by members of, 228.

PAYMENT :

into Court of money, etc., 31.

PENAL CODE :

definition of, 4.

PENAL SERVITUDE :

offences punishable with, for life or twenty years not triable at quarter sessions, 54.

not to be for a shorter term than five years, 235.

how inflicted, 235.

sentence where person convicted of offences for some one or more of which he may be sentenced to, and for others to imprisonment, 241, 242.

sentences after a previous conviction of offences punishable with, 242, 243.

persons sentenced to, being unlawfully at large, 403.

PENDING BUSINESS :

how to be proceeded with after this Code coming into force, 33.

PENSION :

- of Judge of High Court of Criminal Justice, 13.
- Court of Criminal Appeal, 14.
- to Judges permanently disabled, 14, 15.
- of Judges charged on Consolidated Fund, 15.

PERIODICAL PUBLICATION :

- protection of proprietor of, for defamatory matter published in, without his knowledge and authority, 409.
- what constitutes authority, 409.
- protection of persons innocently selling a, containing defamatory matter, 409, 410.

PERJURY :

- not triable at quarter sessions, 53.
- committed in the course of a judicial proceeding, 340-343.
- subornation of, 341.
- no one to be proceeded against or tried for perjury or subornation of perjury in a pending judicial proceeding, 343.
- committed otherwise than in a judicial proceeding, 342.
- rule of evidence as to, 343.
- observation as to statutes relating to offences punishable as, 343.
- using probate or letters of administration obtained by, 359, 360.

PERSISTENTLY FOLLOWING :

- a person from place to place with a view to compel him to do or abstain from certain acts, 420.

PERSON :

- definition of, 6.

PERSONATING :

- fraudulently, owner of stock, annuity, or other public fund, 369.
- stock of any public body, or body corporate, 369.
- dividend or coupon, 369.
- a person authorized by power of attorney to transfer stock or receive dividends, 369.
- any person with intent to obtain any property, real or personal, 370.
- the heir, executor, administrator, or assignee of any person, 370.
- the wife, widow, child, or other relation of any person, or a devisee or legatee, 370.
- a creditor, 370.
- bail, 370.

PERSONATION :

- not triable at quarter sessions, 54.
- fraudulent, of owners of property, 368-371.

PERSONATION—*continued*.

of a voter at an election, 439, 440.

fraudulently applying for a ballot paper in the name of another person, 440.

the like in his own name, having previously voted, 440.

fraudulently signing any declaration in relation to an election in the name of another, 440.

transmitting as genuine any such declaration, knowing same to be false, 440.

knowingly and wilfully making any false statement of fact in any declaration in relation to an election, 440.

PETITIONS :

to Parliament, publication of matter contained in, privileged, 407.

PETTY SESSIONS :

the expression "magistrate or justice" includes, 5.

PILES, etc. :

removing, 321.

PIRACY :

not triable at quarter sessions, 53.

definition and punishment of, 273-276.

engaged in, definition of, 276.

PIRATE :

definition of, 276.

aiding, 276, 277.

not fighting, 277.

PLACE :

definition of, 5.

of commission of offences, 230-233.

PLANTATION :

setting fire to, 314.

PLAY :

cheating at, 392.

PLEA :

in abatement or bar, 169.

of want of jurisdiction, 169.

of *autrefois convict* or *acquit*, 169.

how tried, 169, 170.

special, in case of libel, 170.

prosecutor may apply for particulars of, 170, 171.

PLEADINGS :

in criminal cases to be drawn as hereto provided, 154.

PLEDGING :

fraudulent, definition and punishment of offence, 385-387.

being entrusted with property, in violation of good faith making any consignment or deposit, transfer or delivery thereof by way of pledge, lien, or security, 385, 386.

saving as to act done in good faith in relation to property comprised in a trust, 386, 387.

by a mortgagor in relation to property comprised in mortgage, to the extent of money due thereon, 386.

by person claiming a lien, etc., to an extent reasonably necessary to satisfy same, 386.

by acceptor of bill drawn by owner, to an extent not greater than amount thereof, 386.

no one convicted or acquitted upon trial for this offence to be afterwards tried for any other offence on the same facts, 387.

POISON :

administering, so as to endanger life or inflict grievous bodily harm, 300.

with intent to injure or annoy, 300.

POLICE SUPERVISION :

power of Court to order, 244, 245.

POLLING STATION :

fraudulent acts at an election by any officer or clerk in attendance at a, 434, 435.

POSSESSION :

of property obtained, etc., by commission of offence against this Code and unable to show that same acquired lawfully or without guilty knowledge, 385.

no one convicted or acquitted upon trial for this offence to be afterwards tried for any other offence on the same facts, 385.

POST CARD :

definition of expression, 416, 417.

illegally opening or detaining a, 416.

POST LETTER :

stealing a, 382.

definition of expression, 416, 417.

illegally opening or detaining a, 416

POST LETTER-BAG :

stealing a, 380.

POST PACKET :

stealing a, 382.

definition of expression, 416, 417.

illegally opening or detaining a, 416.

POWER OF ATTORNEY :

- for transfer of stock, forging, 351.
- forging attestation to, to transfer stock, etc., 361.
- fraudulently personating person authorized by, to transfer stock, etc., 369.

POWERS :

- instigating foreign, to invade these realms, 258.
- aiding or assisting foreign, at war with the sovereign, 258.

PRÆMUNIRE :

- offences subject to, 447, 448.
- penalties of, 448.

PRELIMINARY INQUIRY :

- discharge for want of evidence in, not a bar to subsequent inquiry, 115.

PREPARATIONS :

- for forgery of exchequer bills and bank-notes, 357-359.

PREVIOUS CONVICTION :

- how proved, 201, 202.
- sentence after, 242-244.
- procedure where accused charged with an offence after a, 244.
- police supervision after, 244, 245.

PRISON :

- breach of, to set at liberty himself or any other person detained for offence punishable with death or penal servitude, 401, 402.
- the like for offence otherwise punishable, 402, 403.

PRISONERS OF WAR :

- knowingly assisting escape of, 405, 406.
- owing allegiance to the sovereign, assisting, on the high seas, in escaping to another country, 405, 406.

PRIVATE PERSON :

- apprehension by, when authorized, 66, 67.

PRIVILEGED COMMUNICATIONS :

- when a justification upon a charge of publishing a defamatory libel, 408.

PRIVY SEAL :

- forgery of, 350.

PROBATE :

- using, obtained by forgery or perjury, 359, 360.

PROCEDURE :

- provisions relating to, to extend to all kinds whatever, 47.
- no provisions save those relating to, to extend to offences prior to this Code coming into force, 47.

PROCLAMATION OF NEUTRALITY : ⁷

duty of persons building, or causing to be built, or equipping a ship for a foreign power at war with a friendly State, upon sovereign issuing, 431.

PROCURATION :

executing, signing, etc., document by, without lawful authority, 347, 348.

PRODUCTION :

of documents, etc., to accused, 206-208.

by accused, 206.

forms of notice relating to, 207, 208 551, 552.

attachment for disobedience of order for, 209.

PROMOTER :

of a body corporate or public company, or of a public loan, fraudulently making, circulating, or publishing any false prospectus, statement, or account, 389.

PROPERTY :

definition of, 223, 224.

place of commission of offences in relation to, 231.

causing injury to saleable, by certain acts and omissions, 306.

fraudulent assignment of, 401.

removal of, 401.

breach of duty tending to expose to destruction or injury valuable, 419.

PROSECUTION :

by private person, limitation of time for, 55, 56.

may be directed by Court in certain cases, 57.

power now possessed by Court to direct, 57.

how commenced, 66.

when a, may be withdrawn, 177.

duty of, to lay before the jury all trustworthy evidence, 179.

examination of accused at trial on behalf of, 180, 181.

for anything done under the authority of this Code, provisions as to, 477.

limitation of time for commencement of, 477.

PROSECUTOR :

definition of, 5.

entitled to inspection and copy of depositions pending remand of accused, 105, 106.

may declare his intention of preferring an Act of Accusation in case of refusal to commit, but must enter into recognizances, 127.

form of same, 127, 529, 530.

PROSECUTOR—*continued*.

- entitled thereupon to copy of the depositions and summonses for witnesses on payment, 129, 130.
- who has entered into recognizances to prefer an Act of Accusation, may be ordered to pay costs of the accused in case of acquittal, 130, 131.
- entitled to copy of examination of person dangerously ill, whose statement has been taken, 135.
- may admit document or statement of fact, 203.
- calling upon, to make admissions, 204, 205.
- Court may require, to make admissions in certain cases, 205.
 - form of order, 205, 549.
- production of documents by, 206, 207.
 - form of notice requiring, 207, 552.
- discovery of documents by, 206, 207.
- form of affidavit of discovery by, 207, 550, 551.
- requiring production by accused to give notice, 207, 208.
 - form of notice, 208, 552, 553.
- omitting or refusing to produce documents, 208.
- order for payment of costs by a, 460.
- entitled to costs where accused charged with publishing a defamatory libel pleads a justification, and jury find that issue against him, 460.

PROSPECTUS :

- fraudulently making, circulating, or publishing a false, of a body corporate or public company, 389.

PROTECTION :

- of proprietor of a periodical publication in case of defamatory matter published therein without his knowledge, 409.
- to persons innocently selling books and other publications which contain defamatory matter, 409, 410.
- of persons acting under this Code, 477-486.

PUBLIC COIN :

- offences against the, not triable at quarter sessions, 54.

PUBLIC COMPANY :

- frauds by officers of, 389, 390.
- in course of winding up, 389, 390.

PUBLIC FUNDS :

- forgery of transfer of share or interest in, 350.
- making false entries in books relating to, 360.
- fraudulent transfer of, in name of person not being the true owner, 360.
- fraudulently personating owner of interest in, 369.

PUBLIC OFFICERS :

- offences by or in relation to, not triable at quarter sessions, 54.
- of a body corporate or public company, offences by. See *Director*.

PUBLIC OFFICERS—*continued*.

- special offences by or in relation to, 410–416.
- giving false certificate or certified or office copy, 411, 412.
- knowingly making a false entry, 412.
- certifying as true any false copy or entry, 412.
- oppression by, 413.
- fraud or breach of trust by, affecting the public, 414.
- wilful neglect of duty by, 415.
- disabilities attending commission of corrupt acts by, 415, 416.

PUBLIC SERVANT :

- theft of property by, entrusted to him, or in his possession or control as such, 381.

PUBLICATIONS :

- treasonable, 259.
- obscene, 311, 312.

PUNISHMENT :

- for offences against this Code, 234–244.
- when Court may abstain from passing any, 240.
- discretion of Court as to, 240, 241.

QUARTER SESSIONS :

- definition of, 5.
- courts of, practice and procedure of, in criminal matters, may be regulated by Rules of Court, 30.
- saving as to holding of, 38.
- Order in Council may regulate time of holding, 40, 43.
- what offences against this Code may not be tried at, 52–54.
- present law as to jurisdiction of, 54, 55.
- committal in case of exceptional difficulty for offence triable at, 119.
- appeal from, to the High Court of Criminal Justice, 144.

QUAYS :

- malicious injuries to, 320.

QUITTING ENGLAND :

- debtor adjudged bankrupt, or whose affairs are liquidated by arrangement, and taking with him goods to the value of twenty pounds, 400, 401.
- attempting or making preparation for that purpose, 400, 401.

RAILWAY :

- wilfully endangering the safety of persons on, 300, 301.
- wantonly endangering same, 301.
- trains, malicious injuries to, 322.

RAPE :

- not triable at quarter sessions, 53.
- definition and punishment of, 289, 290.
- carnally knowing a child under the age of twelve years, 290.
- attempt to commit, 290.
- observation upon existing law as to, 290.

RECEIVING :

- property with a guilty knowledge, 383, 384.

RECOGNIZANCE. See *Bail*.

- procedure where same not entered into, 108, 109.
- transmission of, where not entered into before magistrate or justice who fixed bail, 112.
- estreating, 114, 169.
- condition of, entered into by or for an accused, 119.
- transmission of, upon committal of accused for trial, 123.
- accused may be required to enter into, either in addition to, or in lieu of, any punishment, 234, 240, 241.
- fraudulently acknowledging, in the name of another, 370.

RECORD, etc. :

- of a Court of justice, forgery of, 353.

RE-EXAMINATION :

- of witnesses for the prosecution, 96.

REFUSAL :

- to serve an office, at present an offence, 448.

REGISTRATION :

- of lands, fraudulent acts to obtain the, 392, 393.

RELIGION :

- public insults to, not triable at quarter sessions, 53.
- definition and punishment of, 312.
- assaults upon ministers of, definition and punishment of, 309, 310.

REMAND :

- of accused, when and for what period authorized, 103-105.
- existing law as to duration of, 105.
- accused may be ordered to be brought up before expiration of, 105.
- prosecutor and accused entitled to inspection and copy of depositions pending, 105, 106.

REMOVAL :

- of property, fraudulent, 401.

REPEAL :

- of common and statute law relating to indictable offences, 7.

REPEALED :

- list of statutes, 489-506.

REPLY :

for the Crown, exceptional right of, taken away, 190.
present practice as to, 190.

RESCUE :

of a prisoner out of custody for offence punishable with death or
penal servitude, 401, 402.
the like for offence otherwise punishable, 402, 403.
attempts to, 402, 403.

RESCUING :

assembling together, armed, for the purpose of, goods seized by
officers of customs, 427.
any person lawfully apprehended for an offence against any
statute relating to customs, 427.

RESERVING QUESTIONS :

of law arising upon a trial before a Court of Oyer and Terminer or
Gaol Delivery, 195, 196.
the like upon a trial before a court of quarter sessions, 197, 198.
same to be stated in form of a case, 196, 197.
form of same, 197, 546.
procedure as to, where conviction reversed, 196, 198.
the like where conviction affirmed, 197, 198.
Court reserving any question of law may assign counsel, 199.

RESERVOIR :

malicious injury to bank or wall of, 320.
removing piles, etc., in bank or wall of, 321.

RESIGNATION :

of a public office or employment, corrupt acts in relation to, 414-416.

RESISTING :

by force or violence, officers, etc., duly employed for the prevention of
smuggling, in the execution of their duty, 427.

RESPITE :

of sentence of death, 283.

RESTORATION :

of property, power of Court to order, 451, 452.
saving as to negotiable securities and property entrusted to
agents, 452, 453.

RESTRAINT :

using or threatening to use, to a voter to induce or compel him to vote
or refrain from voting at an election, 438, 439.

RETURNING OFFICER :

fraudulent acts by, at an election, 434, 435.

REWARDS :

unlawfully taking, under pretence or on account of helping any per-
son to recover property criminally obtained, 384.

RIOT :

- not triable at quarter sessions, 53.
- definition and punishment of, 265-269.
- existing law as to, 267.
- twelve or more rioters continuing assembled together for one hour after reading of proclamation prescribed by the Riot Act, 266, 267.
- twelve or more rioters continuing assembled together for one hour after time when proclamation would have been made unless prevented, 267, 268.
- limitation of time for instituting prosecution for, 268.

RIOT ACT :

- opposing reading of proclamation prescribed by the, 268.

RIOTERS :

- demolishing buildings, etc., 268.
- injuring buildings, etc., 269.

RIOTOUSLY :

- preventing or obstructing the loading or unloading, or the sailing or navigating, of a ship, 421.

RIVER :

- polluting a public, 418.

RIVERS :

- destroying bank, dam, or wall of, 320.
- removing piles, etc., in, 321.
- obstructing the business of navigable, 321.
- injuries to salmon, 321.
- polluting, 321, 322.

ROBBERY :

- not triable at quarter sessions, 53.
- definition and punishment of, 334-336.
- with violence, definition and punishment of, 336, 337.
- assaults and threats with intent to commit, 337.

ROGUE AND VAGABOND :

- incorrigible, observations as to offence of being an, 444.

ROPE-YARD :

- of the sovereign, setting fire to, or destroying, in time of war, 260.

RULE OF EVIDENCE :

- as to perjury or subornation of perjury, 343.
- as to false statements, 343.
- upon trial of any person for breach of duty to a seaman or apprentice, 424, 425.

RULES OF COURT :

- term includes forms and schedules, 4.
- officers to perform duties directed by, 23.

RULES OF COURT—*continued*.

- status of officers transferred may be determined by, 26.
- may be made for carrying this Code into effect, 29, 30.
 - regulating sittings of Courts, 29.
 - Judges in Chambers, 29.
 - vacations, 29.
 - pleading, practice, and procedure, 30.
 - pleading, etc., of courts of quarter sessions, 30.
- may be altered and annulled, 30.
- new, may be made, 30.
- to be laid before Parliament, 30, 31.
- to regulate matters to which they extend, 31.
- may provide for delivery, payment, or deposit in Court of any money or property, 31.
- may be annulled by address of either House of Parliament, 31, 32.
- to be made to provide for hearing of pressing business in vacation, 44.

RULES OF LAW :

- enacted by this Code, application of, 10.

SALARY :

- of Judges of High Court of Criminal Justice, 12.
- of Court of Criminal Appeal, 12, 13.
- charged on Consolidated Fund, 15.

SALE :

- exposing for, any obscene book, paper, print, picture, drawing, model, or other representation, 311.
- obtaining any obscene book, etc., with intent to sell or expose for, 311.

SALMON RIVER :

- injuries to, 321.

SCIENTIFIC EVIDENCE :

- of exceptional difficulty, provision in a case involving, 473.

SEA-BANKS :

- malicious injury to, 320.
- removing piles, etc., in, 321.

SEALS :

- of State, forgery of, 350.
- any dominion, colony, or possession of the Crown, 350
- any foreign prince, State, or country, 350.

SEAMAN :

- wrongfully forcing on shore, 423.
- leaving behind, 424.
- discharging abroad, 423.

SEARCH-WARRANT :

- power to issue, 81.
- form of, 81, 515.
- not to issue unless upon a sworn information, 82.
 - form of information, 82, 516.
- only one entry to be made under, 82.
 - but a fresh search-warrant may be issued upon an information disclosing sufficient grounds, 82, 83.
- execution of, 83.
- may be executed on any day and at any hour, 83.
 - proviso as to, 83.
 - form of endorsement, authorizing same, 83, 516.

SECURITY :

- for restoration of property, when not invalid, 255.
- compelling any person to make, etc., a valuable, 334, 335.
 - write, impress, or affix any name or seal upon paper or parchment in order that same may be converted into a valuable, 334, 335.
- forgery of a valuable, 352, 354, 355.
- obtaining execution, etc., of a valuable, by fraud, 387.
- officers of a body corporate or public company fraudulently destroying, etc., a valuable, 388.
- clerks and servants fraudulently altering, etc., a valuable, 390.

SEDITION :

- not triable at quarter sessions, 53.
- definition and punishment of, 271, 272.
- proviso as to, 272, 273.
- proprietor of any periodical publication not liable for any, contained therein without his knowledge and authority, 273.
- persons innocently publishing or selling books, etc., containing, 273.

SEDUCING :

- persons serving in the forces of the Crown from their allegiance, definition and punishment, 270, 271.

SELF-DEFENCE :

- publication of matter in, 408.

SELF-JUSTIFICATION :

- publication of matter in, 408.

SERVANT :

- fraudulent alteration, mutilation, or falsification by, of any book, paper, writing, valuable security, or account of his employer, 390.

SERVICE :

- of summons on persons accused of offence, 74.
- proof of, of summons, 84.
- forms of affidavit of, 84, 517, 518.
- of summons on witnesses examined in the preliminary inquiry, 119, 120.

SETTING FIRE TO. See *Arson*.

in time of war, any of the ships or vessels of war of the sovereign,
260.

arsenals, dockyards, etc., 260.

military or naval stores, etc., or any place
where same kept, 260.

SHAREHOLDER :

inducing a person to become a, by means of a false prospectus, etc.,
389.

SHARES :

fraudulently affecting the market price of, 391.

SHERIFF :

Judges to issue precepts to, to summon jurors, 466, 467.

duty of, to apply for precept, 467.

to obey precept, 467.

to demand and, where necessary, levy fines on jurors for non-attendance, 468, 469.

to cause panels to be prepared and exhibited, 470.

to transmit same and printed copies to officer of Court, 470.

a copy of such panels to be kept in the office of the, 470.

and to be open for public inspection, 470.

to deliver names, etc., of jurors on separate pieces of parchment, card,
or paper, for ballot, 471, 472.

SHIP :

definition of, 226.

destroying any part of a, in distress, etc., or any goods, etc., belonging
thereto, 318.

riotously preventing or obstructing the loading or unloading, or sailing
or navigating of, 421.

sending to sea in an unseaworthy state, 421, 422.

attempting to send, 422.

criminal responsibility of managing owner of a British ship sent to
sea unseaworthy, 422.

master of a British ship knowingly taking to sea unseaworthy, 422.

wrongfully forcing on shore seaman or apprentice, 423.

leaving behind, 423.

discharging a seaman or apprentice abroad, 423.

acts tending to loss or danger of, 425.

endanger life or safety of persons on board of, 425.

taking illegally enlisted persons on board, 429, 430.

forfeiture of, built or building, etc., to be employed in the military or
naval service of a foreign State at war with a friendly State, 433.

proceedings for the condemnation and forfeiture of, in aid of hostilities
against a friendly State, to require sanction of a Secretary of
State, 433.

SHIP—*continued*.

proceedings for the condemnation and forfeiture of, to be taken in the Admiralty Division, 433.

may be instituted contemporaneously with criminal proceedings, 433.

institution of criminal proceedings not compulsory because proceedings instituted for a forfeiture, and *vice versâ*, 434.

detention of, when authorized, 434.

SHIP-BUILDING :

illegal, 430.

proviso as to, for a foreign State at war with a friendly State, 430, 431.

presumption in case of, 432.

SHIPPING MASTER :

when sanction of, necessary to discharge a seamen or apprentice in a British possession, 423.

SHIPS :

of war, etc., setting fire to or destroying, 260.

rioters demolishing, 268.

injuring, 269.

setting fire to, 314.

blowing up, etc., by gunpowder, 315.

attempting to blow up, 315, 316.

scuttling, 317.

attempts to scuttle, 318, 319.

altering or exhibiting false signals to, 318.

act tending to immediate loss or destruction of, 318.

damaging, otherwise than by fire, gunpowder, or explosive substance, 319.

SHOOTING :

at officers duly employed for the prevention of smuggling, in the execution of their office, 426.

at a vessel or boat, belonging to the navy or in the service of the revenue, within one hundred leagues of the coast, 426.

SHORTHAND :

evidence in preliminary inquiry may be taken in, 94, 95.

evidence so taken to be transcribed and read over to witness, 97.

evidence of accused may be taken in, 100, 101.

SHORTHAND WRITERS :

appointment and duties, etc., of, 27, 28.

where to perform their duties, 28.

to be sworn, 95.

SIGN MANUAL :

forgery of the, 350.

SITTINGS :

- of Court of Criminal Appeal, 29, 34, 35.
- of High Court of Justice, 29, 34.
- during Long Vacation, 35.
- for trial of accused persons in London, 39.
- the like elsewhere, 41.
- in vacation, 44.

SLAVE TRADING :

- not triable at quarter sessions, 53.
- definition and punishment of, 277-280.
- seamen knowingly serving on board slave-ship, 279, 280.
- forfeiture of vessels, etc., engaged in, 280.

SMUGGLING :

- offences in aid of, 426-428.
- shooting at officers employed in the prevention of, 426.
- a vessel or boat employed in the prevention of, within one hundred leagues of the coast, 426.
- assembling together, armed, for the purpose of or in aid of, 426, 427.

SOLICITOR :

- concealment of title by, 394.
- falsification of pedigree upon which title does or may depend by, 394.
- conviction of, not to prejudice civil rights of person aggrieved, 394, 395.
- practising as a, after conviction of barratry, etc., 442, 443.

SOLICITORS :

- of Supreme Court to be solicitors of Supreme Court of Criminal Judicature, 25, 26.
- jurisdiction of Supreme Court of Criminal Judicature over, 26.

SOVEREIGN :

- assaults upon the, not triable at quarter sessions, 52.
- public contempts against the, not triable at quarter sessions, 53.
- definition of, 223.
- attempts to kill the, or his heir or consort, 258.
- acts done with intent to do the, bodily harm, 258.
- the like with intent to subject him to physical restraint, 258.
- levying war against the, 258, 259.
- aiding foreign power at war with the, 259.
- setting fire to or destroying ships of war, arsenals, stores, etc., the property of, 260.
- assaults, etc., upon the, definition and punishment of, 262-264.
- public contempts against the, definition and punishment of, 264.
- existing law as to, 264.
- proviso as to, 264.

SPECIAL JURY :

- definition of, 465.
- remuneration of, 465.
- to consist, unless by consent, of special jurors only, 466.
- Judges to issue precepts to sheriff to summon, for trial of persons at
Courts of Oyer and Terminer or Gaol Delivery, 466, 467.
- fine on, for non-attendance, 467, 468.
- mode of enforcing same, 468, 469.
- time within which to be levied, 469.
- notice of fine to be given to, 469.
- remission of fine, 469.
- not to be liable to fine for non-attendance unless summons served
six clear days, 469, 470.
- sheriff to make out panel of, 470.
- to transmit same and printed copies to officer of Court, 470.
- copy panel of, to be publicly exhibited, 470.
- making out and publishing chief panels of, 470, 471.
- panel of, to be annexed to Act of Accusation, 471.
- mode of balloting for, 471, 472.
- to be chosen by ballot, 472.
- same may try several Acts of Accusation in succession, 472.
- limitation of service on, 472.
- Court may direct trial before, 472, 473.

STACK :

- of cultivated vegetable produce, etc., setting fire to, 314.
- of mineral fuel, setting fire to, 314.

STAMP :

- of seals, forging the, 350.

STAMPS :

- forgery of public, 354.
- other offences relating to, 362, 363.
- rule of evidence in relation to, in case of licensed dealers, 364.

STATEMENTS :

- making false, to or before any person by law authorized to receive the
same, 342.
- rule of evidence as to, 343.

STATUTES REPEALED :

- list of, 489-506.

STOCK :

- forgery of transfer of Government, 350.
- fraudulent transfer of, in the name of person not being the true
owner, 360.
- fraudulently personating owner of, 369.
- person authorized by power of attorney to
transfer, etc., 369.
- fraudulently affecting the market price of, 391.

STORES :

- setting fire to or destroying, in time of war, any of the sovereign's
naval or victualling, 260.
- setting fire to same, 314.

STUPEFYING DRUGS, etc. :

- administering, etc., with certain criminal intents, 299.

SUICIDE :

- attempt or incitement to commit, not triable at quarter sessions, 53.
- definition and punishment of, 285.

SUMMARY CONVICTION :

- by magistrates and justices in petty sessions, 136-143.
- effect of, 142.
- forms of, 142, 532, 533.
- not to be quashed merely for defect of form, 142, 143.
- to be transmitted with depositions, etc., to court of quarter sessions,
143.

SUMMARY JURISDICTION :

- of magistrates and justices, saving as to, 8.
- in case of offenders pleading guilty to offences which courts of quarter
sessions have jurisdiction to try, 136-143.

SUMMING UP :

- of Judge, 190.

SUMMONS :

- to compel appearance of person accused, when magistrate or justice
to issue a, 71, 72.
- form of, 72, 510, 511.
- not to issue unless upon information in writing or oath, 72.
- present practice in reference to granting, 72.
- may be served upon deponent to any information, to secure his
attendance at hearing, 73.
- form of same, 73, 512.
- service of, on person charged with offence, 74.
- second may issue when omission to attend not wilful, 75.
- form of same, 75, 513.
- to be under hand of magistrate or justice, 76.
- no objection to be allowed for defect of form in, 83, 84.
- may be served in any part of the United Kingdom, 84.
- service of, how proved, 84.
- forms of affidavit of, 84, 517, 518.
- to compel attendance of witness or production of documents, 88.
- form of same, 88, 520.
- service of same, 89.
- conduct money to be paid when witness out of jurisdiction, 89.
- warrant may issue for wilful disobedience to, 89, 90.
- form of warrant, 90, 520, 521.
- provision as to execution of same, 90, 91.

SUMMONS—continued.

- on witnesses examined in preliminary inquiry to attend trial, 191, 120.
 - form of, 120, 526.
- endorsement of certificate of expenses on, 120, 121.
 - form of same, 121, 527.
- to compel attendance on trial of witnesses not examined in the preliminary inquiry, 121, 122.
 - form of same, 122, 527, 528.
 - provision as to service of same, 122.
- transmission to place of trial of duplicate of, 124, 130.
- witness served with, on trial not appearing, how to be dealt with, 125, 126.
 - attending upon, entitled to expenses, 126, 127.
- to be issued to accused to compel attendance of witness on trial, 129.
 - prosecutor entitled to same on payment, 129, 130.

SUPERIOR :

- obedience to the orders of a, when a defence, 249.

SUPREME COURT OF CRIMINAL JUDICATURE :

- constitution of, 11.

SURETY. See Bail.

- not to be refused only because he is not a householder, 107.¹
 - present practice, 107.
- proposed, not to be hindered or dissuaded, 107, 108.

SURGICAL TREATMENT :

- omission to use an ordinarily reasonable amount of knowledge, skill, and attention when administering, 282, 305.
- death resulting from, not employed in good faith or employed without ordinary reasonable skill, etc., 282.

SURPRISE :

- ground of application for new trial, 210.

TELEGRAPHIC MESSAGE :

- stealing a, 382.
- disclosing or intercepting contents of, 416.
- definition of expression, 417.

TELEGRAPHS :

- malicious injuries to, 323.

TERMS :

- used in this Code, construction of, 3-6, 223-226.

TERRITORIAL WATERS ADJACENT :

- the expression "dominions of the sovereign" includes the, 428.

TESTAMENTARY DISPOSITION :

- forgery of, 350.
- stealing a, 380.

THEFT :

- observations as to the existing law, 376-378.
- definition of, 376-379.
- punishment of, 380-383.
- of property movable or rendered movable, 377, 378.
- moving, cutting, or severing property with intent to commit, 378.
- killing any living creature that may be the subject of, in order unlawfully to appropriate the carcass, skin, or plumage, 378.
- by fraudulent conversion, 378, 379.
- by person entrusted with a power of attorney, 379.
- by a wilful false pretence or representation, 379.
- destroying, cancelling, obliterating, or concealing a valuable security equivalent to, 379, 380.
- receiving with a guilty knowledge property obtained by, 383, 384.
 - negotiating or bargaining for same, 384.
 - unlawfully taking reward for helping any person to recover same, 384.
- value of property where damage done in order to commit, 383.

THREAT :

- using, and putting in fear with intent to rob, 337.

THREATENING :

- to accuse of offence, extortion by means of, 335, 336.
- violence to or restraint of the person of another, in order to extort, 334, 335.
- to publish a libel, with intent to extort, 336.

TIME :

- of coming into force of this Code, 3.
- of holding Divisional Courts, 43.
- within which a private person may institute a prosecution, 55, 56.
 - sentence may be passed on a person ordered to come up for judgment if called upon, 201.
 - an application may be made for a new trial, 215.
 - a prosecution for treason may be instituted, 260, 261.

TITLE :

- how this Act may be cited, 3.
- forgery of documents forming or evidencing, to land or hereditaments, 352.
- to land, etc., fraudulent acts to obtain certificate of, 392, 393.
 - concealment by vendor or mortgagor, his solicitor or agent, of anything material to, 394.
- falsification of pedigree affecting, 394.

TRADE-MARK :

- definition of expression, 364, 365.
- offences against, 365-367.
- forfeiture of property used in commission of offences relating to, 366, 367.

TRADER :

- obtaining property on credit under the false pretence of carrying on business, and dealing in the ordinary way of his trade, 399.
- pawning, pledging, or disposing of property obtained on credit, otherwise than in the ordinary course of his trade, 399, 400.

TRAINING :

- illegal, not triable at quarter sessions, 53.
- definition and punishment of, 269, 270.
- meeting for, may be dispersed, 270.
- limitation of time for instituting prosecution for, 270.

TRANSFER :

- forgery of, of share or interest in any stock, annuity, or other public fund of the United Kingdom, 350.
- of any other of the dominions of the sovereign, 350.
- of any foreign prince, State, or country, 350.
- of any public body or company, 350.
- fraudulent, of share or interest of or in public fund in name of person not being the true owner, 360.
- stock, etc., fraudulently personating person authorized to, 369.

TRANSFER OF LAND ACT :

- frauds against the, 392, 393.

TRANSPORTS :

- being unlawfully at large, 403.

TREASON :

- not triable at quarter sessions, 52.
- observation on past and present law as to, 257-259.
- definition and punishment of, 256-260.
- attempts to kill the sovereign, or his heir or consort, 258.
- acts done with intent to do the sovereign grievous bodily harm, 258.
- the like with intent to subject him to physical restraint, 258.
- levying war against the sovereign, 258, 259.
- instigating foreign powers to invade these realms, 259.

TREASON—*continued.*

- aiding or assisting foreign powers at war with the sovereign, 259.
- publishing anything with intent to incite to the commission of, 259.
- inciting or conspiring to commit, 259.
- setting fire to or destroying ships of war, 260.
- proviso as to words, written or spoken, expressive merely of an intention to commit, 259.
- limitation of time within which a prosecution for, may be instituted, 260, 261.
- rule of evidence as to, 261.
- punishment of an accessory after the fact to, 261.

TREASURY :

- definition of, 4.
- may grant compensation to persons whose salary, etc., seriously diminished by this Code, 26.

TRIAL :

- course to be pursued where evidence insufficient to justify committal of accused for, 114, 115
- accused entitled to show cause why he should not be committed for, 115.
- procedure where, after hearing defence, magistrate or justice decides to commit accused for, 116, 117.
- if, after hearing defence, magistrate or justice decides not to commit for, accused to be discharged, 117.
- person committed for, and not bailed, to be detained, 118.
- provision where accused committed for, in county not within jurisdiction of committing magistrate or justice, 118.
- place of committal for, 119.
- power to change place of, 149.
- subject to what conditions, 150.
- by whom and how notice of change of place of, to be given, 150.
- where place of, changed, depositions, etc., to be transmitted to Court in which trial ordered to take place, 150.
- what orders may be made where place of, changed, 150, 151.
- postponement of, where Act of Accusation ordered to be amended, 159, 160.
- the like in other cases, 162, 163, 186.
- present practice of calling additional evidence on, 162.
- may be directed to take place in adjoining county, 163.
- of accused persons, 165-202.

TRIERS :

- appointment of, where challenge of array disputed, 175, 176.

TRUSTEE :

- of a body corporate or public company fraudulently making, circulating, or publishing any false prospectus, statement, or account, 389.

TRUTH :

- when a justification for the publication of a defamatory libel, 407, 408.
- plea of justification upon the ground that matter complained of true and published for the public benefit, 170, 408.
- when defence of, not permitted to be raised, 408.

UNDUE INFLUENCE :

- at elections not triable at quarter sessions, 54.
- at an election, 438, 439.

UNITED KINGDOM :

- person against whom warrant issued may be apprehended in any part of, 76, 77, 90, 168.
- summons may be served in any part of, 84.

UNLAWFUL ACT :

- definition of, in relation to murder and manslaughter, 281, 282.

UNLAWFUL ASSEMBLY :

- existing law as to, 269.

UNLAWFUL COERCION :

- not triable at quarter sessions, 54.

UNLAWFUL OATHS :

- not triable at quarter sessions, 53.
- present law as to administering, etc., 250, 271.
- definition and punishment of taking or administering, 271.

UNLAWFUL POSSESSION :

- of property, definition and punishment of offence, 385.
- no one convicted or acquitted upon trial for this offence to be afterwards tried for any other offence on the same facts, 385.

UNNATURAL OFFENCES :

- not triable at quarter sessions, 54.
- definition and punishment of, 296, 297.
- attempt to commit, 297.
- assault with intent to commit, 297.

UNSEAWORTHY SHIP :

- sending to sea, 421, 422.
- attempting to send, 423.
- master of a ship knowingly taking to sea, 422.

UNSOUND MIND :

- accused called upon to plead appearing to be of, 171.
- if so found by jury, may be ordered to be detained during Her Majesty's pleasure, 171.
- such accused entitled to assistance of counsel, 171, 172.

UTTERING :

counterfeit current coin, knowingly having in the possession any other piece of counterfeit current coin, 375.

and on the day of doing so, or within ten days, knowingly uttering another counterfeit current coin, 375.

a counterfeit coin, 375.

VACATIONS :

may be regulated by Rules of Court, 29, 30.

sittings in, 35, 44.

to be observed, 44.

VALUABLE SECURITY :

definition of, 225, 226.

compelling any person to make, execute, destroy, alter, or cancel a, 334, 335.

to write, impress, or affix any name or seal upon paper or parchment in order that same may be made or converted into a, 334, 335.

forgery of a, 352, 354, 355.

obtaining execution, etc., of a, by fraud, 387.

officers of a body corporate or public company fraudulently destroying, mutilating, or falsifying a, 388.

clerks and servants fraudulently altering, mutilating, or falsifying a, 390.

VALUE OF PROPERTY :

when and how punishment of theft determined by, 380-383.

VENDOR :

fraudulent concealment by, of anything material to title, 394.

falsifying pedigree on which the title to property does or may depend, 394.

VENUE :

abolition of, 55.

VERDICT :

of guilty, upon what ground may be disturbed, 193.

procedure where jury find a, amounting in the opinion of the Court to a verdict of guilty, 192, 193.

to be delivered in open Court, 193.

may be delivered on a Sunday, 193.

sentence may be passed or respited on, 199.

not justified by evidence ground for application for new trial, or to enter verdict of not guilty, 211.

against the weight of evidence ground for application for new trial, or to enter verdict of not guilty, 211.

of not guilty not to be disturbed, 211.

VESSEL :

shooting at, belonging to the navy or in the service of the revenue within one hundred leagues of the coast, 426.

VICTUALLING OFFICE :

of the sovereign, setting fire to or destroying in time of war, 260.

VICTUALLING STORES :

of the sovereign, setting fire to or destroying, in time of war, 260.

VIEW :

Court or Judge may direct a, 209.

VIOLENCE :

offences committed, or attempted to be, with, 299-302.

attempts to render insensible, unconscious, or incapable of resistance by, 299.

WAR :

setting fire to or destroying ships of, etc., 260.

prisoners of, knowingly assisting escape of, 405, 406.

owing allegiance to the sovereign, assisting, on the high seas, in escaping to another country, 405, 406.

WARRANT :

when an offender may be apprehended without, 66-68.

persons so apprehended, how to be dealt with, 67.

procedure upon apprehension of person without, for offence committed in another district, 68, 69.

to convey an accused before another magistrate or justice, 69, 70.

form of, 69, 509.

to apprehend, where magistrate or justice issues a, 71-73.

form of, 72, 510.

not to issue unless upon information in writing and on oath, 72.

when not to issue in first instance, 72.

magistrate or justice may require satisfactory proof before granting, 73.

for wilful disobedience of summons, 74, 75.

form of, 75, 512, 513.

may issue in certain cases notwithstanding summons issued and time for appearing thereto has not expired, 76.

form of same, 76, 514.

to be under hand of magistrate or justice issuing same, 76.

may be executed in any part of the United Kingdom, 76, 77, 90, 168.

backing of, when unnecessary, 77, 78.

person apprehended on, how to be dealt with, 77.

how executed when accused in custody undergoing sentence, 78.

granted in Ireland or Scotland may be executed in England or Wales, 78.

how person so apprehended to be dealt with, 79.

WARRANT—*continued*.

- execution of English, in the Channel Islands, 79, 80.
- granted in Channel Islands, execution in England of, 80.
- form of endorsement of, 80, 515.
 - effect of same, 80.
- power to issue a search, 81.
 - form of same, 81, 515.
- to apprehend may be issued or executed at any time, 83.
- to remain in force until executed, 83.
- no objection to be allowed for any defect in form of, 83, 84.
- person apprehended under, entitled to copy of, 85.
- no proceeding invalid by reason of refusal or omission to furnish copy of, 85, 86.
- for wilful disobedience of a summons to attend and give evidence or produce, 89, 90.
 - form of same, 90, 520, 521.
 - provision as to execution of same, 90, 91.
- procedure on witness being brought up on, 91-93.
- where accused remanded in custody, 113.
 - form of same, 113, 523.
 - effect of same, 113.
- against any person, having been admitted to bail, wilfully failing to appear, 113, 114.
 - form of same, 114, 524.
 - provision as to executing same, 114.
- of commitment, form of, 118, 525, 526.
 - effect of same, 118.
- when to issue bench, 163.
 - execution of same, 168.
 - form of same, 169, 544.
- person in the employment of the Bank of England making out false dividend, 361.

WATER :

- of a public river, rendering unfit for use, 418.
- breach of duty or contract whereby inhabitants of any place deprived of their supply of, 419.

WATERCOURSES :

- malicious injuries to, 320.

WEAPON :

- striking at sovereign with, 263.

WHARVES :

- malicious injuries to, 420.

WHIPPING :

- punishment of, when authorized, 236, 298-302, 314-316, 318-326, 328, 330, 334, 337.

WHIPPING—continued.

- no female to be subject to, 236.
- when may be ordered, 237.
- how inflicted, 237.
- within what period to be inflicted, 237, 238.
- may be cumulative upon other punishment, 238.

WIFE :

- of an accused a competent and compellable witness, 48.
- may be called and examined either for prosecution or defence, 48.
- in what cases, may be examined for or against an accused by the present law, 48, 49.
- dealing with property of husband, 228.
- persons assisting or inciting to commit an offence in relation to property of husband, 229.
- committing crime being under marital subjection, 247.

WILFULLY :

- definition of, 331.

WILL :

- forgery of, 350.
- stealing a, 380.

WINDING UP :

- destroying, mutilating, or falsifying books, etc., of a company in course of, 389, 390.
- making false entry in books of same, 389, 390.

WITCHCRAFT :

- pretending to exercise, observations as to offence of, 445, 446.

WITNESS :

- evidence of foreign, to be interpreted, 64, 65.
- summons to compel attendance of, 88.
 - form of same, 88, 520.
 - service of same, 89.
- payment of conduct money to, 89.
- wilfully disobeying summons to attend and give evidence or produce before magistrate or justice, 89, 90.
- procedure upon contumacious, being brought up on warrant, 91-94.
- refusing to be examined or produce, or to take oath or affirmation, or to sign deposition, 93, 94.
- may be ordered out of Court during preliminary inquiry, 94.
- examination of, in preliminary inquiry, how taken, 94, 95.
- by whom to be examined in preliminary inquiry, 95.
- to specify his name, address, and occupation, 95.
- for the prosecution, accused entitled to cross-examine, 95, 96.
 - who to re-examine, 96.
- evidence taken in preliminary inquiry to be read over to, 96.

WITNESS—*continued*.

- to sign deposition, 97.
- evidence taken in shorthand to be read over to, 97.
- may correct, alter, or add to his evidence when read over, 97, 98.
- magistrate or justice to sign statement of, 98.
- calling of, by Court, 103, 179, 180.
- for the defence in preliminary inquiry, 115, 116.
- examination of, how taken, 116.
- service of summons to attend trial on any, examined in the preliminary inquiry, 119, 120.
- the like on any, not so examined, 121, 122.
- payment of conduct money to, if not resident near place of trial, 123.
- form of summons to compel attendance of, on trial, 120, 122, 526-528.
- duplicates of same to be transmitted to place of trial, 124, 130.
- served with summons to appear and give evidence or produce on trial, not obeying same, 125, 126.
- attending trial entitled to expenses, 126, 127.
- notice to be given of intention to call on trial any, for the prosecution not examined in the preliminary inquiry, 161, 162.
- not to be called unless notice given, 162.
- may be ordered out of Court during trial, 178, 179.
- reading on trial deposition of, who is dead, ill, or kept away, 183-185.

WOOD :

- setting fire to a, 314.

WRECK :

- preventing escape from, definition and punishment of, 287.

WRIT :

- wilfully neglecting or delaying, etc., transmission or delivery of, in election of member to serve in Parliament, 435.

WRITS :

- of error abolished, 59.
- of *habeas corpus ad testificandum* unnecessary, 61.

YORK :

- county of, to be deemed next adjoining county to the county of the town of Kingston-on-Hull, 163, 164.



DATE DUE

UNIVERSITY OF ILLINOIS-URBANA

KD7872.L48X

C001

DRAFT CODE OF CRIMINAL LAW AND PROCEDURE



3 0112 022852740